

CHAPTER 38

UTILITIES

ARTICLE I - DEPARTMENT ESTABLISHED

38-1-1 **DEPARTMENT ESTABLISHED.** There shall be an executive department of the City known as the Utilities Department. It shall include the Utilities Committee appointed by the Mayor and its employees. The designated office shall be the City Hall.

38-1-2 **COMMITTEE ON UTILITIES.** The City Council standing committee on utilities shall exercise a general supervision over the affairs of the water, sewer and electric departments. It shall ascertain the condition and needs thereof; and shall, from time to time, report the same to the Mayor and City Council so that a full understanding thereof shall be had; and generally, shall do all acts necessary to promote the efficiency of the Departments.

ARTICLE II - RATES AND REGULATIONS

DIVISION I - GENERAL PROVISIONS

38-2-1 CONTRACT FOR UTILITY SERVICES.

(A) **Customer Accepts Service.** The rates, rules and regulations contained in this Chapter shall constitute and be considered a part of the contract with every person, company or corporation who is supplied with utility services from the Water and Sewer Systems and every person, company or corporation hereinafter called a "customer" who accepts and uses utility services shall be held to have consented to be bound thereby.

(B) **Not Liable for Interrupted Service.** The City shall endeavor at all times to provide a regular and uninterrupted supply of service, however, in case the supply of service shall be interrupted or irregular or defective or fail from causes beyond its control or through ordinary negligence of employees, servants or agents, the Department shall not be liable therefor.

(C) **Using Services Without Paying.** Any person using utility services from the City without paying therefor or who shall be found guilty of breaking the seal of any meter or appurtenances or bypassing any meter shall be guilty of violating this Code and upon conviction, shall be fined a sum as provided in **Chapter 1 entitled "Administration"** of this Code.

(D) **Destroying Property.** Any person found guilty of defacing, tampering, injuring or destroying, or in any manner, limiting the use or availability of any meter or any property of the utility systems, or erecting signs on the property of the utility systems, or erecting signs on the property of the utility systems without permission shall, upon conviction of such act, be fined as provided in **Chapter 1 entitled "Administration"** of this Code. It shall be unlawful for any person to enter upon the sewer compound designated by the fenced-in enclosure. Any person other than employees of the City of Breese or their representatives entering upon the sewer plant premises shall be guilty. **(Ord. No. 836; 10-03-95)**

(E) **Service Obtained by Fraud.** All contracts for utility services must be made in the name of the head of the household, firm or corporation using the established spelling of that person's or firm's name. Attempts to obtain service by the use of other names, different spellings or by substituting names of other persons or firms shall be considered a subterfuge and service shall be denied. If service has been discontinued because of non-payment of bills or any unpaid obligation and service has again been obtained through subterfuge, misrepresentation or fraud, that service shall be promptly disconnected and the whole or such part of the advanced payment as may be necessary to satisfy the unpaid obligation shall be retained by the City and credited to the appropriate account.

(F) **Failure to Receive Bill.** Failure to receive a bill shall not excuse a customer from his obligation to pay within the time specified. Should the Department be unable to bill a customer for services used during any month, the next billing shall include the charges for services used during the unbilled month. A month shall be considered as that period of approximately **thirty (30) days.**

(G) **Request to Discontinue Service.** Services shall have been deemed to have been supplied to any property connected to the utility systems during a month unless the customer notifies the City prior to the first day of the new billing month in which the utility services are to be discontinued.

(H)

Billing; Utility Shut-off; Hearing; Deferred Payment.

(1) **Payment for Utility Services and Default.** All bills for utility services shall be due and payable upon presentation. If a bill is not paid by the due date printed on the bill or by the **twenty-fifth (25th) day** of the month (or the next business day in the event that the **twenty-fifth (25th) day** of the month falls on a weekend or a holiday) the bill is presented, whichever is later, a penalty equal to **ten percent (10%)** of the amount due on said bill shall be added thereto. This penalty shall be in addition to the charges heretofore established for the utility services. If a customer has an objection to a charge on the bill they receive from the City, they shall raise such objections to the City on or before the **fifty (5th) day** after they receive the bill. Unless an objection is raised by the customer on or before the **fifth (5th) day** after they receive the bill from the City, the City shall presume that the charges are valid.

(2) **Past Due Notice.** A "Past-Due" notice shall be sent to the customer if the bill is not paid on or before the **first (1st) day** of the next succeeding month following the month of the unpaid bill (or the next business day after the **first (1st) day** of the month in the event that the **first (1st)** falls on a weekend or holiday). The "past due" notice, which shall be sent by first-class mail, personally delivered to the customer or posted on the premises receiving the utility service. The method of delivery shall be determined by the City. The Notice shall provide as follows:

- (a) The name and address of the customer and/or the owner, or both and the amount of the bill.
- (b) That if payment is not received by the **tenth (10th) day** of that month ("Deadline to Avoid Disconnection"), the customer's utility services shall be disconnected.
- (c) That the customer has the right to request a hearing regarding the proposed disconnection of services and has the right to present evidence on his or her behalf at such hearing and appear in person or by representative and that such request for a hearing must be made in writing and received by the City prior to the stated Deadline to Avoid Disconnection.
- (d) That the customer may avoid disconnection by entering into and performing a Deferred Payment Agreement with the City which shall provide that the Customer agrees to pay the amount in arrears in **four (4)** equal consecutive monthly installments, conditioned upon timely payment of future bills falling due within the period of the Deferred Payment Agreement.

If the owner of the property served by the utility is someone other than the customer, the City may send a copy of such notice to the owner if the owner of the premises has registered his or her name and address with the City for the purpose of receiving such notices.

(3) **Final Notice of Disconnection.** If the customer fails to pay the utility bill by the Deadline to Avoid Disconnection, fails to request a hearing or fails to enter into a Deferred Payment Agreement with the City, the city shall serve a Final Notice of Disconnection (Red Tag), giving the customer **twenty-four (24) hours'** notice of utility disconnection.

- (4) **Hearing Prior to Disconnection.** In the event that a customer requests a hearing regarding the proposed disconnection of utility services, the City shall send a notice of the date, time and location of the hearing to the customer by first class mail. Such hearing shall be scheduled within **ten (10) days** of the date that a request for hearing is received by the City from the customer. No extension of time for the hearing shall be granted. If the customer fails to appear at the hearing, a Final Notice of Disconnection (Red Tag) shall be delivered to the customer, giving the customer notice that his or her utility services shall be disconnected within **twenty-four (24) hours**. If a hearing is conducted, the Hearing Officer and Disconnection Committee (appointed by the Mayor), shall review the evidence and statements presented at the hearing, shall conduct its own investigation into the objections raised by the customer and shall render a decision within **three (3) working days** of the date the hearing is conducted. Notice of the decision of the hearing officer shall be mailed to the customer first class mail, personally delivered or posted at the premises receiving the services, as determined by the City, within **three (3) working days** of the date the decision is rendered. If the decision of the hearing officer is that disconnection shall take place, then along with the notice of decision, the customer shall be given a notice that if the amounts due are not paid in full on or before **five (5) days** from the date of the notice of decision, then utility services shall be disconnected. In the event that the customer has not paid all amounts due on or before that date, then the City shall issue a Final Notice of Disconnection (Red Tag), advising the customer that service shall be disconnected within **twenty-four (24) hours** of the date of the notice.
- (5) **Deferred Payment Agreement.** A customer who receives notice that their utility service shall be disconnected for failure to timely pay their utility bill, as described herein, shall have the option to enter into a "Deferred Payment Agreement" which shall provide that the customer shall pay the amounts in arrears over **four (4)** equal consecutive monthly installments. The Deferred Payment Agreement must be signed by the customer on or before the Deadline to Avoid Disconnection. **Twenty-five percent (25%)** of the amount in arrears must be paid on or before the date that the Deferred Payment Agreement is signed by the customer. Each subsequent payment shall be made on or before the **twenty-fifth (25th) day** of the month, commencing with the month following the month the agreement is executed. The Deferred Payment Agreement shall also provide that the customer shall make all payments for current utility services coming due within the period of the deferred payments in a timely manner as a condition of the agreement. In the event that a customer fails to perform the Deferred Payment Agreement as provided therein, then the city shall issue to the customer a Notice of Default by first class mail, giving the customer **five (5) days** to cure the default. In the event the customer fails to cure the default described in the Notice, then the city shall terminate the Deferred Payment Agreement and all deferred amounts due and owing to the City shall become immediately due and owing. The customer shall then be issued a Final Notice of Disconnection (Red Tag) notifying the customer that utility service shall be disconnected within **twenty-four (24) hours** of the date of notice.

- (6) **Reconnecting Disconnected Services.** Once utility services have been disconnected [terminated], the same shall not be again connected or used until all delinquent accounts and bills of service are paid in full, including a fee of **Seventy-Five Dollars (\$75.00)**, if request for reconnection during regular business hours, and **Two Hundred Dollars (\$200.00)** if request is for reconnection outside of regular business hours, for each connection of such utility services, plus expenses incurred in the reconnection of the utility services. **(Ord. No. 1528; 01-17-23)**

(Ord. No. 1198; 09-15-09)

(I) **Lien Notice.** Whenever a bill for utility services remains unpaid for **sixty (60) days** after it has been rendered, the Clerk shall file a statement of lien claim with the County Recorder of Deeds. This statement shall contain the legal description of the premises served, the amount of the unpaid bill, and a notice that the municipality claims a lien for this amount as well as for all charges for utility services served subsequent to the period covered by the bill.

If the consumer of utility services whose bill is unpaid is not the owner of the premises and the Clerk has notice of this, then notice shall be mailed to the owner of the premises if his address is known to the Clerk whenever such bill remains unpaid for a period of **sixty (60) days** after it has been rendered.

The failure of the Clerk to record such lien or to mail such notice, or the failure of the owner to receive such notice shall not affect the right to foreclose the lien for unpaid utility bills as mentioned herein.

(J) **Foreclosure of Lien.** Property subject to a lien for unpaid utility charges may be sold for non-payment of the same and the proceeds of such sale shall be applied to pay the charges, after deducting costs as is the case in the foreclosure of statutory liens. Such foreclosure shall be billed in the name of the City. The City Attorney is hereby authorized to institute such proceedings in the name of the City, in any Court having jurisdiction over such matters, against any property for which the bill for utility services has remained unpaid **sixty (60) days** after it has been rendered.

38-2-2 **CONSUMER LISTS.** It is hereby made the duty of the Superintendent to prepare or cause to be prepared an accurate list of all premises and properties receiving utility services, showing the name and address of the occupant and/or owner of the same. The list shall be kept up-to-date, and shall be corrected from time to time to allow changes in the occupancy or ownership of any such property or premises.

38-2-3 **LIABILITY FOR CHARGES.** The **owner** of any lot, parcel of land or premises receiving utility services, the **occupant** of such premises and the **user** of the services shall be jointly and severally liable for the payment of the services to such lot, parcel of land or premises and all services are rendered to the premises by the City only on the condition that such owner, occupant **and** user shall be jointly and severally liable to the City therefor.

38-2-4 **ESTIMATED CHARGE.** Whenever any meter, by reason of its being out of repair or from any cause, fails to properly register the utilities passing through the same, the consumer shall be charged the average usage charge of the **previous three (3) months**. If no record of the previous **three (3) months** exists, then it shall be the duty of the Collector to estimate the amount of utilities consumed during the time the meter fails to operate, and the consumer shall be charged with such estimated amount. Bills may be estimated whenever it is impossible to read the meters during inclement weather.

38-2-5 **NO FREE SERVICE.** No free service shall be furnished to any person and all rates and charges shall be non-discriminatory, provided that the Mayor and City Council reserve the right to impose special rates and charges in cases where particular circumstances render the regular rates inadequate or unjust.

38-2-6 **RESALE PROHIBITED.** No utility service shall be resold or distributed by the recipient or consumer thereof from the City supply to any premises other than that for which application has been made and the meter installed, except in cases of emergency.

38-2-7 **DISCONTINUANCE OF WATER SERVICE--CUSTOMER.** The customer shall notify the City of any change in occupancy. No adjustment of bills will be made by the City as between the owners or tenants unless **ten (10) days notice** prior to the change of occupancy has been given to the City. No rebate will be given for unoccupied premises unless notice of non-occupancy is given.

Any customer may discontinue water service by giving the City notice not less than **ten (10) days** prior to the discontinuance, and all liability for charges for service rendered after the discontinuance of service as herein provided for shall cease.

38-2-8 **UTILITY DEPOSITS.** All persons applying for Utility service, to be used on property which is not owned by the applicant, shall pay the amount of **Two Hundred Dollars (\$200.00)** for a meter deposit to the City for electric service, and shall pay the amount of **Fifty Dollars (\$50.00)** for a meter deposit to the City for water/sewer service.

The deposits made under the provisions of this Section shall be held by the City as security for the payment of utilities used by the applicant upon the premises to which his or her application pertains, and may be so applied when any default is made in the payment in the utilities bill, in accordance with this Chapter. **(Ord. No. 1291; 09-03-13)**

38-2-9 **RULES TO BECOME PART OF CONTRACT.** All of the rules and regulations concerning the use of the facilities of the water and sewer utilities shall be adopted and the same shall become a part of the contract with every consumer and every consumer shall be considered to consume utilities from the City, subject thereto and bound thereby.

38-2-10 **BUILDING UNIT DEFINED.** All persons of families residing in a building under **one (1) roof**, be it an apartment or homes converted into more than **one (1) dwelling place**, each family or individual resident residing therein shall be deemed an individual consumer and such homes or apartments or dwellings shall be billed for at least **one (1)** minimum water account, according to the number of family or individual residents residing therein. Hotel, Motels, Nursing Homes and Hospitals are excluded. **(#314A; 11-18-69)**

ARTICLE III - UTILITY RATES

DIVISION I - GENERAL

38-3-1 **ACCOUNTS.** The City Clerk shall establish a proper system of accounts and shall keep proper books, records, and accounts in which complete and correct entries shall be made of all transactions relative to the utility systems, and at regular annual intervals he shall cause to be made an audit by an independent auditing concern of the books to show the receipts and disbursements of those systems.

In addition to the customary operating statements, the annual sewer audit report shall also reflect the revenues and operating expenses of the wastewater facilities, including a replacement cost, to indicate that sewer service charges under the waste cost recovery system and capital amounts required to be recovered under the industrial cost recovery system do in fact meet these regulations. In this regard, the financial information to be shown in the audit report shall include the following:

- (A) Flow data showing total gallons received at the wastewater plant for the current fiscal year.
- (B) Billing data to show total number of gallons billed.
- (C) Debt service for the next succeeding fiscal year.
- (D) Number of users connected to the system.
- (E) Number of non-metered users.
- (F) A list of users discharging non-domestic wastes (industrial users) and volume of waste discharged.

38-3-2 **NOTICE OF RATES.** A copy of the sewer rates properly certified by the City Clerk, shall be filed in the office of the Recorder of Deeds of Clinton County and shall be deemed notice to all owners of real estate of the charges of the sewerage system of the City on their properties.

38-3-3 **ACCESS TO RECORDS.** The Illinois Environmental Protection Agency, United States Environmental Protection Agency, or their authorized representatives shall have access to any books, documents, papers and records of the City which are applicable to the City's system of user charges or industrial cost recovery for the purpose of making audit, examination, excerpts and transcriptions thereof to insure compliance with the terms of the Special and General Conditions to any State Grant, State Loan Agreement and Rules of any State Loan. **(Ord. No. 1058; 02-03-04)**

38-3-4 - 38-3-9 **RESERVED.**

DIVISION II - WATER RATES

38-3-10 **WATER RATES.** The following monthly charges shall prevail for water consumption:

- (A) **Inside Corporate Limits.**
- | | |
|------------------------|--------------------------|
| First 1,000 gallons at | \$11.57 (minimum charge) |
| Next 2,000 gallons at | 6.45 per 1,000 gallons |
| Next 4,000 gallons at | 5.60 per 1,000 gallons |
| Over 7,000 gallons at | 5.08 per 1,000 gallons |
- (B) **Outside Corporate Limits.**
- | | |
|------------------------|--------------------------|
| First 1,000 gallons at | \$14.89 (minimum charge) |
| Next 2,000 gallons at | 9.08 per 1,000 gallons |
| Next 4,000 gallons at | 8.31 per 1,000 gallons |
| Over 7,000 gallons at | 6.15 per 1,000 gallons |

Each water customer shall also be charged a **Three Dollar (\$3.00)** per month meter charge.

Beginning **January 1, 2016**, water rates shall increase annually in accordance with the Consumer Price Index (CPI). Water consumption shall include all water passing through the meter including water lost through leaks/breaks on the customer's side of the meter.

Bills for water usage are due and payable upon presentation. Service will be discontinued for any customer who fails to pay for water service within **thirty (30) days** from date of billing.

38-3-11 **WATER TAP-IN FEES.** A person desiring a water service shall apply to the Clerk for a permit and shall pay the following fees:

- (A) **Inside Corporate Limits.**
- (1) **Three-fourths (3/4) inch** connection – **One Thousand Dollars (\$1,000.00).**
 - (2) **One (1) inch** connection - **One Thousand Five Hundred Dollars (\$1,500.00).**
- (B) **Outside Corporate Limits (Upon approval of City Council Only).**
- (1) **Three-fourths (3/4) inch** connection – **One Thousand Dollars (\$1,000.00).**
 - (2) **One (1) inch** connection - **One Thousand Six Hundred Dollars (\$1,600.00).**

(C) If a connection larger than described above is requested, an additional charge shall be made, based upon actual cost. The additional charge shall be first determined by the City Council before issuance of the permit for said connection.

(Ord. No. 1446; 04-07-20)

38-3-12 TURNING SERVICES ON. A charge shall be made for shutting off and turning on water services when requested after working hours. **(Ord. No. 1159; 02-05-08)**

38-3-13 APPEALS. The method for computation of rates and service charges established for user charges in **Article III** shall be made available to a user within **fourteen (14) days** of receipt of a written request for such. Any disagreement over the method used or in the computations thereof shall be resolved by reference to a third party accountant who does not represent the City within **fourteen (14) days** after notification of a formal written appeal outlining the discrepancies. **(Ord. No. 1058; 02-03-04)**

38-3-14 ANNUAL WATER RATE REVIEW AND ADJUSTMENTS. The adequacy of the water service charge shall be reviewed, not less often than annually, by Certified Public Accountants for the City in their annual audit report. The water service charge shall be revised periodically to reflect a change in local capital cost or Operation, Maintenance and Replacement costs. **(Ord. No. 1058; 02-03-04)**

38-3-15 RESERVED.

DIVISION III - SEWER RATES

38-3-16 SEWER USER CHARGES. The charges for sewer services shall be made on a monthly basis, based on the water meter readings for the same quarter of each year. The sewer service charge for the use of and for service supplied by the wastewater facilities of the City shall consist of a basic user charge for operation and maintenance plus replacement, a capital cost for depreciation and debt reduction, and, a surcharge and/or rebate, if applicable. **(Ord. #449A; 12-18-79)**

In the event of a water main breakage on the customer's side of the meter, the charges for sewer services shall be for the period immediately following the leakage the sum of **Thirty Dollars (\$30.00)** or the equivalent of the previous month bill, whichever is less. **(Ord. #482A; 02-17-81)**

38-3-17 SEWER: BASIC USER CHARGE. The basic user charge shall be based on water usage as recorded by water meters and/or sewage meters for wastes having the following normal domestic concentrations:

(A) A five day, 20 degree centigrade (**20°C**) biochemical oxygen demand (BOD) of 240 mg/l.

(B) A suspended solids (SS) content of 263 mg/l.

It shall consist of a basic user charge for operation and maintenance costs plus replacement, depreciation and a capital cost charge for debt reduction, and, shall be computed as follows:

- (1) Estimate the projected annual revenue required to operate and maintain the wastewater facilities including a replacement/depreciation and debt retirement fund for the year, for all works categories.
- (2) Proportion the estimated costs to wastewater facility categories by Volume, Suspended Solids and BOD, if possible.
- (3) Estimate wastewater volume, pounds of SS and pounds of BOD to be treated.
- (4) Proportion the estimated costs to non-industrial and industrial users by volume, suspended solids and BOD.
- (5) Compute costs per 1,000 gallons for normal sewage strength.
- (6) Compute surcharge costs per mg/l in excess of normal sewage strength for BOD and SS.

38-3-18 SURCHARGE. A surcharge will be levied to all users whose BOD and SS exceed 240 mg/l and 263 mg/l respectively. The surcharge will be based on water usage as recorded by water meters and/or sewage meters for all wastes which exceed the 240 mg/l and 263 mg/l concentration for BOD and SS respectively. **Section 38-3-22** specified the procedure to compute a surcharge.

38-3-19 SERVICE CHARGE AUDIT. The adequacy of the wastewater service charge shall be reviewed annually by Certified Public Accountants for the City in their annual audit report. The wastewater service or a change in operation and maintenance costs including replacement costs.

38-3-20 MEASUREMENT OF FLOW. The volume of flow used in computing basic user charges and surcharges shall be the metered water consumption read to the lowest even increments of 1,000 gallons.

(A) If the person discharging wastes into the public sewers procures any part or all of his water from sources other than the City Waterworks System, all or a part of which is discharged into the public sewers, the person shall install and maintain, at his expense water meters of a type approved by the Supervisor of Public Works for the purpose of determining the volume of water obtained from these other sources.

(B) Devices for measuring the volume of waste discharged may be required by the Supervisor of Public Works if these volumes cannot otherwise be determined from the metered water consumption records.

(C) Metering devices for determining the volume of waste shall be installed, owned, and maintained by the person. Following approval and installation, such meters may not be removed, unless service is canceled, without the consent of the City.

38-3-21 BASIC USER RATE. There shall be, and there is hereby established a minimum charge and basic user rate for the use of and for service supplied by the Wastewater Facilities of the City.

(A) A minimum charge of **Thirteen Dollars Seventy-Four Cents (\$13.74)** per month shall be applied to all users whose water consumption does not exceed **one thousand (1,000) gallons** per month.

(B) A basic user rate of **Three Dollars Seventy-Four Cents (\$3.74)** per **one thousand (1,000) gallons** shall be applied to all users for water consumption in excess of **one thousand (1,000) gallons** per month.

The minimum charge and basic user rate shall commence at the **January, 2023** Monthly Billing Period.

(C) On January 1st of 2023, the minimum charge and basic user rates shall increase by the average Consumer Price Index for urban consumers for the preceding year. On January 1st of each year thereafter the minimum charge and basic user rate shall be adjusted based upon the average Consumer Price Index (C.P.I.) for urban consumers for the preceding year. **(Ord. No. 1529; 01-17-23)**

38-3-22 SURCHARGE RATE. The rates of surcharges for BOD₅ and SS shall be as follows:

$$\begin{aligned} SC_{BODi} &= \$0.10 (BOD_i - 240) \times Q_i \times 8.34 \\ SC_{SSi} &= \$0.07 (SS_i - 263) \times Q_i \times 8.34 \\ SC_i &= SC_{BODi} + SC_{SSi} \end{aligned}$$

Where Q_i = total quarterly flow volume expressed in million gallons.
 BOD_i = Biochemical Oxygen Demand Concentration (5 day, 20 degrees Centigrade) of waste expressed in milligrams per liter.
 SS_i = Suspended Solids Concentration of waste expressed in milligrams per liter.
 SC_{BODi} = Quarterly surcharge in dollars for Biochemical Oxygen Demand for waste concentrations greater than 240 mg/l.
 SC_{SSi} = Quarterly surcharge in dollars for Suspended Solids for waste concentrations greater than 263 mg/l.
 SC_i = Total Quarterly surcharge in dollars.

(Ord. No. 449A; 12-18-79)

38-3-23 COMPUTATION OF SURCHARGE. The concentration of wastes used for computing surcharges shall be established by flow measurements and waste sampling. Waste sampling and flow measurement shall be performed as often as may be deemed necessary by the Superintendent and shall be binding as a basis for surcharges. **(Ord. No. 449A; 12-18-79)**

38-3-24 **COMPUTATION OF WASTEWATER SERVICE CHARGE.** The wastewater service charge shall be computed by the following formula:

$$CW = CM + (VU-X) Cu + SC_i$$

Where CW = Amount of wastewater service charge (\$) per billing period. (Quarterly)
CM = Minimum Charge for Operation, Maintenance, Replacement (\$4.56) and Depreciation and Debt Reduction, (\$3.36), (\$7.92) (**See Sec. 38-2-11**)
Vu = Wastewater Volume for the billing period. (Gallons)
X = Allowable consumption in gallons for the minimum charge (**Section 38-2-11**) (4000 gallons)
CU = Basic User Rate for Operation, Maintenance, and Replacement (\$1.14); and, Depreciation, and Debt Reduction (\$0.48) (\$1.98 per 1000 gallons)
SC = Amount of Surcharge. (**Section 38-2-12**)

38-3-25 **REBATE.** The City may at its discretion grant an equitable rebate or discount on each and every bill for a particular billing period. This rebate shall be pro-rated on each bill at a reduction in the basic user rate up to but not exceeding the prorated share of Debt Reduction per. (**See Sec. 38-2-11**)

38-3-26 **NO WATER SERVICE; SEWER RATE.** For use of the sewer system by property owners living within the corporate limits of the City, who have no water connection, a minimum charge of **Thirty-Two Dollars (\$32.00)** per year shall be made.

38-3-27 **REVENUES.** All revenues and monies derived for the sewage and water systems shall be deposited in separate accounts by the City Clerk at the end of each day the monies are collected. Funds in these accounts shall be administered by the City in every respect in the manner provided by statute.

Bills shall be rendered on May 1st, August 1st, November 1st and February 1st. (**#449A; 12-18-79**)

38-3-28 **SEWER TAP-INS.** The following rates or charges are hereby established for connecting to the Municipal Sanitary Sewer System of the City:

(A) **Special Assessment.** For connecting to a City sanitary sewer line which was installed as a part of the original sanitary sewer system of the City, where the property to be served by the connection was taxed by special assessment for the original sanitary sewer system, the charge shall be **Two Hundred Dollars (\$20000)**. (**Ord. No. 1157; 02-05-08**)

(B) **No Special Assessment Paid.** For a sewer line installation as a part of the original sanitary sewer system and the property to be served by the connection was not taxed by special assessment, the charge shall be **Three Hundred Dollars (\$300.00)**.

(C) **Lines Installed By.** Where the cost of installing and constructing sewer line was not paid by the City, the charge shall be **One Hundred Dollars (\$100.00)** provided, however, that for connecting to a City sanitary sewer line located in Parkview Terrace No. 1, No. 2, and No. 3, and part of Pleasant Villa Subdivision Incorporated in the City, the charge shall be **Five Dollars (\$5.00).** (**#292A; 11-02-67**)

(D) **Line Paid By City.** For connecting to a City sanitary sewer line which was not established and installed as a part of the original sanitary sewer system of the City of Breese, but where the cost of installing and constructing the sewer line was paid by the City, the charge shall be **Three Hundred Dollars (\$300.00).**

(E) **Payments.** Before a permit is issued to connect with the sanitary sewer system of the City, there shall first be paid to the City Clerk, the fees or charges hereinabove established, except that where the charge to be paid is **Three Hundred Dollars (\$300.00)** the applicant may, at his option, elect to pay the sum of **One Hundred Dollars (\$100.00)** at one time of his application, and the balance in annual installments of **Twenty Dollars (\$20.00)** each, plus interest at the rate of **six percent (6%)** per annum on the amount remaining unpaid, which interest shall also be due and payable annually. (**#2684; 11-02-65**)

(F) (See Water and Sewer Agreement in Exhibit "B")

38-3-29 CHARGES CONSTITUTE LIEN. The charges for connection to the sanitary sewer system shall be a lien upon the real estate for which sewerage service is supplied shall not be paid within **ten (10) days** due. If any payment for charges for system is not paid within **ten (10) days** may discontinue other municipality premises for which the sewer service is whenever any payment due of the date the payment is connection to the sewer of the date due, the City utility services to the provided.

38-3-30 - 38-3-34 RESERVED.

EXHIBIT "A"

SEWER AGREEMENTS

1. **KRUEP'S ADDITION.**

In Kruep's Addition the City shall recover its expansion in constructing the water and sewer lines by charging the following fees for each water and sewer user:

(A) **Sewer.** A **Three Hundred Dollar (\$300.00)** hook-up fee for a sewer service into the sewer main.

(B) **Sewer Extension.** A **One Hundred Dollar (\$100.00)** fee for each sewer line hook-up for excavation, materials, and labor to construct the sewer line to the edge of the lot.

(C) **Lot Fee.** A fee of **One Thousand Dollars (\$1,000.00)** per lot within the annexed area included in the agreement. Fractional lots shall pay on a proportional basis.

(D) **Options.** It is intended that a party desiring sewer service to one lot within the annexed area will pay Item A for each tap-in, Item B is optional and the party may supply excavation, labor, and materials at his own expense if he desires. Item C is required for each lot within the annexed territory included within this agreement. No water service will be supplied to any lot unless this fee shall have been paid for the lot.

If a person does pay the charge in Item C for a lot or lots which do not tap-in to the water and sewer line, he will be allowed to tap them into the water and sewer lines at a later date by paying only the regular tap-in fees at the later date.

(E) **Property of Line.** The water and sewer lines shall be the property of the City and shall be owned and operated by the City thereafter. After construction of the water and sewer system and initial tap-ins by the signatories hereto, all subsequent tap-in fees shall be set by the City ordinance.

(Ord. No. 1157; 02-05-08)

DIVISION IV - ELECTRIC RATES

38-3-35 **ELECTRIC RATES.** The rates for electric energy furnished from the municipal distribution system shall be as follows, based upon monthly readings:

(A) **Residential-Rate.**

First 30 KWH	\$	.2429 per KWH
Next 70 KWH	\$	.1643 per KWH
Next 100 KWH	\$	.1403 per KWH
Next 300 KWH	\$	.1371 per KWH
Next 500 KWH	\$	.1141 per KWH

MINIMUM CHARGE OF \$7.29 per month.

(Ord. No. 1532; 02-07-23)

(B) **Commercial Electric Rate.**

First 60 KWH	\$	.2637 per KWH
Next 140 KWH	\$	.1774 per KWH
Next 200 KWH	\$	.1480 per KWH
Next 600 KWH	\$	.1359 per KWH
Next 1,000 KWH	\$	.1206 per KWH

MINIMUM CHARGE OF \$15.82 per month.

For non-meter security light	\$	6.35 per month
For meter security light	\$	6.00 per month

(Ord. No. 1532; 02-07-23)

(C) On January 1st of each year, the above rates for Residential and Commercial Customers, and the minimum charges for each, shall be adjusted based on the average Consumer Price Index (C.P.I.) for urban consumers for the preceding year.

(Ord. No. 1532; 02-07-23)

(D) **Utility Tax.** There is hereby added to the above rates a tax of **.32 cents** per kilowatt-hour of all electricity which is sold to or for each customer or **5%** of the gross receipts received from each customer from such business whichever is the lower rate as applied to each customer for the applicable billing period, pursuant to the provisions of **Chapter 35 of the Illinois Compiled Statutes, Sec. 620/2.**

(E) **Fee Schedule for Service Taps.** The following fee shall be paid for each customer requiring;

(1) **Fee - Standard 120/240 volt single phase 3 wire service.**

- (a) 200 amp service - **Three Hundred Fifty Dollars (\$350.00)**
- (b) 320 amp service - **Seven Hundred Fifty Dollars (\$750.00)**
- (c) greater than 320 amp - fee based upon cost to provide service

The fee for changing an existing overhead to underground Service Area shall be **Four Hundred Dollars (\$400.00).**

Cost based on Maximum cable run of 100' (as measured from property line to weather head). If additional cable is required, the customer will be charged for the additional cable at **\$2.00** per foot, or at actual cost, should such cost be greater.

- (2) **Non-Standard Service.** Any person, firm or corporation requesting non-standard service shall pay fees to be determined by the City Council of the City. **(Ord. No. 1156; 02-05-08)**

38-3-36 ADDITIONAL CHARGES. In addition to the above compensation, the City shall collect a Purchased Power Adjustment on the sale of each kilowatt-hour to each customer in each rate classification. For each .01 cent modification, or decrease, or major fraction thereof, in the City's monthly purchased power cost of \$.0775 cents per kilowatt-hour in the first **three (3)** or **four (4) months** preceding the billing period, there shall be correspondingly added to or subtracted from each customer's bill, an amount equal to .01 cents per kilowatt-hour times the total kilowatt-hours billed to the customers, on all of the above rates. **(Ord. No. 1479; 05-04-21)**

38-3-37 SUB-METERING. No sub-metering shall be permitted, except by a regular established service company or municipality who are established distributors of electric energy. Energy sold under this Chapter is for the use of the customer and not for resale.

38-3-38 ESTIMATED BILLS.

(A) In case any meter shall stop or for any reason, fail to integrate properly or upon failure to read the meter, the collector of the light department may estimate the monthly bill for electric energy. Wherever possible, estimated bills will be based on the average quantity consumed during the preceding **three (3) months** of the previous year. **One (1) month** of which shall be the same as the month under estimation. **(See Section 38-2-3 for Water and Sewer)**

(B) Whenever a customer has violated **Section 38-2-21** of this Chapter, the collector of the Utility Department shall estimate as nearly as possible the amount of electric energy obtained in violation of this Chapter, or any amendments thereto and charge the same to the customer. Such estimated bill shall not in any way interfere with or be a bar to any prosecution under the terms of this Chapter, but shall be collected from any advance payment or by any other lawful means from the customer.

ARTICLE IV - ELECTRIC SYSTEM REGULATIONS

38-4-1 APPLICATION FOR AN ELECTRIC SERVICE CONNECTION.

An applicant desiring an electric service connection with the City's electric system shall file a written application at the City Hall, signed by the owner of the property for which the service is desired or by the duly authorized agent of such owner. The application shall be accompanied by the fee prescribed in **Section 38-3-35** to cover the installation cost of said service connection. By signing the application, the customer agrees to conform to and abide by the latest edition of the **National Electrical Code** and all rules and regulations of the City Code pertaining to the use of electrical energy by said customer. Any amendments and regulations added to this Code prior to the applicant's service connection being installed shall be complied with also.

38-4-2 INSPECTION. The application for new service shall contain a description of the premises to be served. The Superintendent or his designated representative shall have the option of making an inspection of electric wiring on the premises before electrical energy is supplied to determine the efficiency and condition of the wiring.

By inspecting the premises and approving it for electric service, the City takes no responsibility in guaranteeing the safety or adequacy of the wiring.

38-4-3 STANDARD SERVICE. The standard service voltage for all locations is **120/240 Volts Single-phase, 3-wire**. Any other service voltage or 3-phase service is considered non-standard. The minimum capacity of the service entrance shall be 100 **Amperes. (See applicable fees in Section 38-3-35)**

38-4-4 NON-STANDARD SERVICE VOLTAGE. There may exist locations where an existing distribution network has other than standard secondary service voltage. These non-standard voltages are **240 Volts, 3-phase, 3-wire; 120/240 Volts, 3-phase, 4-wire; and 480 Volts, 3-phase, 3-wire**. These systems are not necessarily being expanded as an obligation to the City and in certain cases, a new service may be installed at the existing voltages in the electrical network. If a non-standard service voltage or 3-phase service is desired, the owner shall consult with the Public Works Director before purchasing heavy duty residential, commercial or industrial equipment for installation on the electrical system. If it is practical, in the opinion of the Public Works Director, the nonstandard service voltage may be provided, however, the owner shall pay for **fifteen percent (15%)** of the first **Two Thousand Dollars (\$2,000.00)** in cost, then shall pay **fifty percent (50%)** of the rest of the cost for transformers and metering. **(Ord. No. 1161; 02-05-08)**

38-4-5 TYPES OF CUSTOMER SERVICE CONNECTIONS. The following types of customer service connections are provided by the electrical system:

(A) **Overhead Connection - Overhead Service Area.** Overhead service shall be delivered to the individual residence by means of overhead cable from the electric system pole structure to a designated point on the dwelling of sufficient height to comply to applicable code clearances. The location of the service entrance shall be such as to provide for the shortest route from the structure to the home as practical. The owner or contractor shall provide the service head, riser conduit, and all other materials and installations required to make a complete installation. Conductor tails of **two (2) foot** lengths shall extend out the riser weatherhead to facilitate making connections to the triplex service conductors provided by the electrical system. Service lengths installed by the electrical system shall be limited to **one hundred (100) feet** from the property line. Any additional length of conductors or additional support facilities shall be installed by the electrical system only at the customer's expense. Meter sockets shall be provided by the City, but installed by the owner or the owner's contractor, and shall be located at a height of **five (5) feet** above final grade with all meters located outside of any building, dwelling or restricted area.

(B) **Underground Connection - Underground Service Area.** In areas designated underground services, the services shall be delivered to the residences by means of a buried triplex cable from pedestal, vault or pad mount transformer located on or near the property line to a point designated on the dwelling. The location of the service entrance shall be such as to provide the shortest routes from the pedestal, vault or pad-mounted transformer to the houses as may be practical. All obstructions such as debris, dirt piles, brush, etc., shall be removed prior to the installation of service, and a lot shall also be graded to within **one (1) foot** of final grade. The owner or contractor shall provide the necessary equipment to provide a complete installation as indicated on the attached drawings. Service length installed by the electrical system shall be limited to **one hundred (100) feet** from the property line. Any additional length of service shall be installed by the electrical system at the customer's expense.

Underground service is not guaranteed by the electrical system as circumstances may force service to be provided to any location by overhead service.

(C) **Underground Connection - Overhead Service Area.** Underground service in an overhead service area will be available, provided engineering considerations will not prohibit service, in the opinion of the Superintendent. The conversion of existing overhead service to underground services shall be available as time and work load permit with the approval of the Superintendent.

(D) **Overhead Service - Underground Service Area.** Overhead service in an underground service area will not be permitted unless, in the opinion of the Superintendent, that due to the engineering considerations, this is the only feasible and practical manner in which service may be provided.

38-4-6 **METERING.** The following rules and regulations shall be adhered to:

(A) **Meters Required.** All locations of customer service by the electrical system shall be metered. Meters shall be provided and installed by the Electrical Department. If, in the opinion of the Superintendent, the situation dictates that a service shall go unmetered due to the lack of a proper meter, the customer will be billed on a flat rate, as determined by the City. All apartments or multi-constructed units shall be provided with individual meters.

(B) **Location.** All meters shall be mounted on an exterior wall in an easily accessible location as designated by the Superintendent or his designated representative.

(C) **Testing.** Any municipal electrical meter shall be taken out of service and tested upon complaint of the consumer upon payment of a fee of **Fifteen Dollars (\$15.00)**. If, upon testing, the meter is not within **three percent (3%)** of being accurate, it shall be repaired or replaced and the **Fifteen Dollar (\$15.00)** fee returned to the consumer. If the meter is within **three percent (3%)** of being correct, the fee will not be refunded.

(D) **Meters Stopped or Registering Inaccurately.** [See Section 38-2-1(L)].

(E) **Tampering.** [See Section 38-2-1(D).]

38-4-7 **USE OF SERVICE.** The following rules of service shall apply:

(A) The Superintendent may deny service to a customer when, in his opinion, the wiring and equipment is unsafe, outside clearances are insufficient, or such proposed service has objectionable characteristics. However, the City will cooperate with the customer in order to determine the necessary remedial action for such characteristics.

All of the customer's lighting equipment, motor driven equipment, apparatus, and appliances shall have such characteristics or be equipped with corrective devices so as to enable the City to maintain a satisfactory standard of electric service. In the case of high motor starting current, violently fluctuating or intermittent loads, etc., the City reserves and shall have the right to require the customer to install, at the customer's expense, transformers and apparatus to correct the objectionable conditions. (These may include welders, hoists, elevator motors, pumps, and similar apparatus.)

(B) When a separate or oversized substation or transformer must be installed specifically to eliminate the effect of the objectionable load characteristic and the distribution system would otherwise have the capacity and equipment required to supply a normal load service of the same size, or where separate transformers and/or services are installed at the customer's request to supply apparatus which may be abnormally sensitive to voltage, the cost of such substation or transformer is considered a corrective device under paragraph (A) above and shall be provided at the customer's expense.

(C) The utilities retain rates that are applicable to industrial and commercial services which are based on all such customers maintaining a power factor of not less than **ninety percent (90%)** lagging. In the event a customer's power factor is less than **ninety percent (90%)** during periods of normal operation, the City reserves the right to require the customer to install, at his own expense, such corrective equipment as may be required to increase the customer's power factor to not less than **ninety percent (90%)**.

(D) When a customer fails to install the necessary facilities on his premises to correct the objectionable conditions from interfering with the City's supply of satisfactory service to other customers, the City shall have the right to deny service to such customer until the objectionable conditions shall have been corrected in a manner satisfactory to the City.

(E) When corrective equipment is installed by the City on its distribution system to correct any objectionable conditions, the customer whose service caused the objectionable conditions will be required to pay the City, without refund, the installed cost of such corrective equipment and the corrective equipment shall remain the property of the City. In lieu of such payment and subject to approval by the City, a customer may elect to pay a monthly charge equal to **1.25%** of the installed cost of such corrective equipment installed by the City.

38-4-8 INCREASE IN CUSTOMER'S LOAD. When a customer makes application for service, he shall specify the amount of electrical load to be connected to the electric system so that the City may determine the adequate service of sufficient capacity for the operation of the equipment to be serviced.

The customer's connected load shall not be increased beyond the limits hereinafter stated until the customer has given written notice to the City Collector and the additional load has been approved by the Superintendent, unless the load increases a total of **three (3) HP or less**, or electrical additions total **twenty (20) amperes or less**, in which case an electrical load increase will not require notification.

If a customer does not give proper notice of increased electrical load, the customer shall be liable for any damage to the equipment of the electric system resulting from the increased load. Furthermore, any person who installs additional electrical loads in excess of those loads not requiring notification without reporting to the City Collector and obtaining approval of the Superintendent of Utilities shall, upon conviction of such failure to notify, be fined not less than **Twenty-Five Dollars (\$25.00)**, nor more than **One Hundred Dollars (\$100.00)**.

The City may elect to refuse to furnish electrical energy to any person or corporation found guilty of failing to report an increased electric load that requires such notification.

38-4-9 RESPONSIBILITY FOR CONTINUITY AND QUALITY OF SERVICE.

(A) The City endeavors to furnish continuous and adequate service; however, it cannot guarantee the service as to continuity, freedom from voltage and frequency variations or reversal of phase rotation, and will not be responsible or liable for damages to customers' apparatus resulting from such failure or imperfection of service. In cases where such failure or imperfection of service might damage a customer's apparatus, the customer shall install suitable protective equipment.

(B) Emergencies may arise in which it is essential for the City to immediately take lines or equipment out of service, for repairs, and to prevent damage to life or property or to prevent a more serious interruption of service. The City reserves the right to take lines or equipment out of service under such conditions and will attempt to give customers advanced warning of such interruptions as conditions may permit.

(C) The City further reserves the right to take lines and equipment temporarily out of service for short periods for maintenance and changes in construction. Such outages will be planned at a time convenient to customers involved, if at all practical and possible.

38-4-10 MOTORS AND APPARATUS. Regulations pertaining to motors and apparatus shall be as follows:

(A) The City reserves the right to select the type of service to be supplied and shall be consulted before equipment is purchased or ordered by a customer regarding the general characteristics of service, including those services having motors **5 HP and larger** or where the aggregate load of smaller motors is more than **7 1/2 HP**.

(B) In general, **7 1/2 HP and larger motors** will be 3-phase and motors smaller than **7 1/2 HP** will be single-phase. There may be, at the City's sole discretion, exceptions to this rule.

(1) In outlying and residential areas where 3-phase energy is not readily available, larger single-phase motors may be permitted, but only with the prior approval of the Superintendent.

(2) Where the customer is already using 3-phase energy, motors smaller than **7 1/2 HP** may be added to the 3-phase service, upon notification to the City, if elsewhere required.

(3) Three-phase service is not normally available for residential customers and is considered non-standard service.

(C) Motors and motorized equipment will generally be approved for use on the electric system only if the Total Locked Rotor Current does not exceed an acceptable level, as determined by the Superintendent.

(D) If starting currents are objectionable and will cause interference on the electric system, in the judgment of the Superintendent, reduced voltage starting or such other methods as the Superintendent determines feasible will be required to be furnished by the customer.

38-4-11 RENTED DUSK-TO-DAWN LIGHTS. Private lighting luminaires (dusk-to-dawn lighting services) for home, schools, security, churches, commercial areas, and industry shall be provided where feasible and in keeping with good electrical practice, as per the following specifications:

(A) A self-contained, automatic, Dusk-to-Dawn Mercury Vapor lighting fixture shall be furnished and installed, or caused to be installed, by the City. Such fixture shall meet the standards and specifications of the City on existing wood pole structures for the customer's use at a monthly charge rate as set out in **Section 38-3-35** for a minimum **two (2) year period**. The charge will be added to the customer's monthly utility bill and shall become an integral part of said bill.

The City will be responsible for making the installation, furnishing the electricity for the operation of the lamp, provide all the necessary maintenance (including the replacement of lamps, but excluding malicious damage) for the **two (2) year period** and all subsequent time additions to the length of service, as agreed to by the City.

(B) Should the installation of a standard lighting unit require the installation by the electrical system of additional facilities not required by the City for distribution purposes other than the private outdoor lighting to be installed, the Electric Department will furnish, install, own and maintain the additional facilities (including wood poles), which may be necessary to provide such lighting from nearby distribution lines. The Electric Department will make a net monthly charge, in addition to the charge set forth above, of **one and one-quarter percent (1 1/4%)** of the additional cost to the Electric Department for the furnishing and installing such additional facilities.

(C) A **two (2) year minimum contract** shall be agreed to and signed by each customer desiring Dusk-to-Dawn Lighting Service, authorizing fixed monthly charges to be applied to the monthly electric utility bill. In the event that a customer desires the removal of the unit or discontinuance of the service, the remainder of the charges to complete the **two (2) year contract** shall become due and payable by the customer.

(D) Dusk-to-Dawn Lighting shall be installed on wood poles with a normal ground-to-lamp height of approximately **twenty-five (25) feet**. Should a customer desire his lighting on steel, aluminum, concrete, or decorative-type poles and/or underground cable installation, the Electric Department may, at its discretion, install or cause the special service to be installed. The customer shall bear the total cost that is above that of a normal wood pole installation and the additional charge shall be paid by the customer prior to installation.

(E) The customer shall have the responsibility to notify the Electric Department of any interruption of service of the Dusk-to-Dawn Lighting. The Electric Department will restore service only during regularly scheduled working hours and shall, in any event, be under no obligation to do so before **seventy-two (72) hours** from the time of notification. In the event the Electric Department is unable to effect repairs not caused by the customer within this period, the Electric Department's only responsibility will be to abate the charges on a pro-rata basis for each day after **seventy-two (72) hours** in which service is not available. The customer shall remove any obstruction to the installation of the City-owned facilities. Trimming of trees to improve the distribution of light shall be the customer's responsibility. The customer shall provide any permits or easements required for the installation or maintenance of the City-owned facilities and permit access to such facilities by the Electric Department's vehicles and personnel. A lighting agreement shall be substantially in the form provided for in **Appendix "F"**.

38-4-12 **CONSTRUCTION OF SERVICE.** All construction of service connections shall be generally in accordance with the drawings (located at the end of this Chapter) unless otherwise approved by the Superintendent.

38-4-13 **TRIMMING TREES.** No trees shall be, in any manner, cut or trimmed in any of the streets, alleys, sidewalks or public places in this City, where such cutting or trimming is not absolutely necessary to the successful operation of any electric, telephone or telegraph lines or system, and unless such trimming is done under the immediate direction of the Superintendent and no trees shall be so cut or trimmed on the property of any private person without the consent of the owner.

All trees necessarily trimmed as aforesaid shall be so trimmed that they may retain their original form and usefulness as nearly as may be, and as not to be mutilated or rendered unsightly or useless for shade or other purposes, or unnecessarily prevented or retarded from following their natural growth and development. Whenever, by resolution, the Council deems it expedient, it may require any reasonable change or replacing of any pole or wire which unduly interferes with the growth of trees or any system of tree planting in this City, subject, however, to the vested and lawful right of the owners of such poles or wires.

38-4-14 **UTILITY POLE REGULATIONS.** The terms, conditions, rates and regulations for attachment to utility poles and placement of facilities in the City is hereby found in **Exhibit "C"** at the conclusion of this Chapter. **(Ord. No. 1077; 10-19-04)**

38-4-15 - 38-4-19 **RESERVED.**

ARTICLE V - SEWER SYSTEM

DIVISION I - DEFINITIONS

38-5-1 DEFINITIONS. Unless the context specifically indicates otherwise, the meaning of terms used in this Code shall be as follows:

"GOVERNMENT, FEDERAL":

(A) **"Administrator"** means the Administrator of the U.S. Environmental Protection Agency. **(Ord. #449A; 12-18-89)**

(B) **"Federal Act"** means the Federal Water Pollution Control Act **(33 U.S.C. 1251 et seq.)** as amended by the Federal Water Pollution Control Act of Amendments of 1972 (Pub. L. **92-500**) and **(Pub. L. 93-243)**.

(C) **"Federal Grant"** shall mean the U.S. government participation in the financing of the construction of treatment works as provided for by Title II-Grants for Construction of Treatment Works of the Act and implementing regulations. **(#449A)**

"GOVERNMENT, LOCAL":

(A) **"Superintendent"** shall mean the Superintendent of Sewage Works and/or of Water Pollution Control of the City, or his authorized deputy, agent, or representative.

(B) **"NPDES Permit"** means any permit or equivalent document or requirements issued by the Administrator, or, where appropriated by the Director, after enactment of the Federal Water Pollution Control Amendments of 1972, to regulate the discharge of pollutants pursuant to Section 402 of the Federal Act.

(C) **"Person"** shall mean any and all persons, natural or artificial including any individual, firm, company, municipal or private cooperation, association, society, institution, enterprise, governmental agency or other entity.

"CLARIFICATION OF WORD USAGE": "Shall" is mandatory; "may" is permissible.

"SEWER TYPES AND APPURTENANCES":

(A) **"Building Drain"** shall mean that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer or other approved point of discharge, beginning **five (5) feet (1.5 meters)** outside the inner face of the building wall.

(B) **"Building Sewer"** shall mean the extension from the building drain to the public sewer or other place of disposal.

(C) **"Combined Sewer"** shall mean a sewer which is designed and intended to receive wastewater, storm, surface and groundwater drainage.

(D) **"Easement"** shall mean an acquired legal right for the specific use of land owned by other.

(E) **"Public Sewer"** shall mean a sewer provided by or subject to the jurisdiction of the City. It shall also include sewers within or outside the City boundaries that serve **one (1)** or more persons and ultimately discharge into the City sanitary sewer or combined sewer system, even though those sewers may not have been constructed with City funds.

(F) **"Sanitary Sewer"** shall mean a sewer that conveys sewage or industrial wastes or a combination of both, and into which storm, surface and groundwaters or unpolluted industrial wastes are not intentionally admitted.

(G) **"Sewer"** shall mean a pipe or conduit for conveying sewage or any other waste liquids, including storms, surface and groundwater drainage.

(H) **"Sewerage"** shall mean the system of sewers and appurtenances for the collection, transportation and pumping of sewage.

(I) **"Storm Sewer"** shall mean a sewer that carries storm, surface and groundwater drainage, but excludes sewage and industrial wastes other than unpolluted cooling water.

(J) **"Stormwater Runoff"** shall mean that portion of the precipitation that is drained into the sewers.

"TREATMENT":

(A) **"Pretreatment"** shall mean the treatment of wastewater from sources before introduction into the wastewater treatment works.

(B) **"Wastewater Treatment Works"** shall mean an arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "pollution control plant".

"TYPES OF CHARGES":

(A) **"Basic User Charge"** shall mean the basic assessment levied on all users of the public sewer system for operation maintenance and replacement.

(B) **"Capital Cost Charge"** shall mean the assessment levied on all users of the public sewer system for depreciation and debt service. **(#449A; 12-18-89)**

(C) **"Depreciation"** shall mean expenditure to establish a sinking fund for replacement of major treatment units at the expiration of the facilities' useful life.

(D) **"Debt Service Charge"** shall be the amount to be paid each billing period for payment of interest, principal and coverage of (loan, bond, etc.) outstanding and shall be computed by dividing the annual debt service by the number of users connected to the Wastewater Facilities.

(E) **"Replacement"** shall mean expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(F) **"Sewerage Fund"** is the principal accounting designation for all revenues received in the operation of the sewerage system.

(G) **"Surcharge"** shall mean the assessment in addition to the basic user charge and debt service charge which is levied on those persons whose wastes are greater in strength than average concentration values as established by code.

(H) **"Useful Life"** shall mean the estimated period during which the collection system and/or treatment works will be operated and shall be **twenty (20) years** from the date of start-up of any wastewater facilities constructed with a State grant.

(I) **"User Charge"** shall mean a charge levied on users of treatment works for the cost operation and maintenance.

(J) **"Wastewater Service Charge"** shall be the charge per quarter or month levied on all users of the Wastewater Facilities.

(K) **"Rebate"** shall mean the discounting or return of a prorated portion of the wastewater service charge up to but no more than the debt service charge for each individual bill.

"USER TYPES":

(A) **"Control Manhole"** shall mean a structure located on a site from which industrial wastes are discharged. Where feasible, the manhole shall have an interior drop. The purpose of a "control manhole" is to provide access for the City representative to sample and/or measure discharges.

(B) **"Industrial User"** shall mean any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

- (1) Division A - Agriculture, Forestry and Fishing
- (2) Division B - Mining
- (3) Division D - Manufacturing
- (4) Division E - Transportation, Communications, Electric, Gas and Sanitary Services
- (5) Division I - Services

A user in the Divisions listed may be excluded if it is determined by the Superintendent excluding domestic wastes or discharges from sanitary conveniences that it will introduce wastewater of **25,000 gallons** per day or less and that the wastewater does not contain substances detrimental to the operation of the municipal treatment works. (**#449A; 12-18-79**)

(C) **"Residential or Commercial" or "Non-industrial"** user shall mean any user of the treatment works not classified as an industrial user or excluded as an industrial user as provided for in this Section.

(D) **"User Class"** shall mean the type of user either "residential or commercial" (non-industrial) or "industrial" as defined herein.

"WASTEWATER FACILITIES" shall mean the structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and transport effluent to a watercourse.

"WATERCOURSE AND CONNECTIONS":

(A) **"Watercourse"** shall mean a channel in which a flow of water occurs, either continuously or intermittently.

(B) **"Natural Outlet"** shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

"WASTEWATER AND ITS CHARACTERISTICS":

(A) **"BOD"** (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in **five (5) days** at 20 degrees centigrade, expressed in milligrams per liter.

(B) **"Effluent Criteria"** are defined in any applicable "NPDES Permit".

(C) **"Floatable Oil"** is oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

(D) **"Garbage"** shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce.

(E) **"Industrial Waste"** shall mean any solid, liquid or gaseous substance discharged, permitted to flow or escaping from any industrial, manufacturing, commercial or business establishment or process or from the development, recovery or processing of any natural resource as distinct from sanitary sewage.

(F) **"Major Contributing Industry"** shall mean an industrial user the publicly owned treatment works that:

- (1) Has a flow of 50,000 gallons or more per average work day; or
- (2) Has a flow greater than **ten percent (10%)** of the flow carried by the municipal system receiving the waste; or
- (3) Has in its waste, a toxic pollutant in toxic amounts as defined in standards issued under Section 307(a) of the Federal Act; or
- (4) Is found by the permit issuance authority, in connection with the issuance of the NPDES permit to the publicly owned treatment works receiving the waste, to have significant impact, either singly or in combination with other contributing industries, on that treatment works or upon the quality of effluent from that treatment works.

(G) **"Milligrams per Liter"** (mg/l) shall mean a unit of the concentration of water or wastewater constituent. It is 0.001 gram of the constituent in 1,000 milliliter of water. It has replaced the unit formerly used commonly, parts per million, to which it is approximately equivalent, in reporting the results of water and wastewater analysis.

(H) **"pH"** shall mean the logarithm (base 10) of the reciprocal of the hydrogen-ion concentration expressed by one of the procedures outlined in "Standard Methods".

(I) **"Population Equivalent"** is a term used to evaluate the impact of industrial or other waste on a treatment works or stream. One population equivalent is 100 gallons of sewage per day, containing 0.17 pounds of BOD and 0.21 pounds of suspended solids.

(J) **"ppm"** shall mean parts per million by weight.

(K) **"Properly Shredded Garbage"** shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than **one-half (1/2) inch (1.27 centimeters)** in any dimension.

(L) **"Sewage"** is used interchangeably with "wastewater".

(M) **"Slug"** shall mean any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than **fifteen (15) minutes** more than **five (5) times** the average **twenty-four (24) hour** concentration or flows during normal operation.

(N) **"Standard Methods"** shall mean the examination and analytical procedures set forth in the most recent edition of "Standard Methods for the Examination of Water and Wastewater" published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation.

(O) **"Suspended Solids"** (SS) shall mean solids that either float on the surface of, or are in suspension in water, sewage, or industrial waste, and which are removable by a laboratory filtration device. Quantitative determination of suspended solids shall be made in accordance with procedures set forth in "Standard Methods".

(P) **"Unpolluted Water"** is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

(Q) **"Wastewater"** shall mean the spent water of a community. From this standpoint of course, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and stormwater that may be present.

(R) **"Water Quality Standards"** are defined in the Water Pollution Regulations of Illinois.

38-5-2 - 38-5-3 RESERVED.

DIVISION II

USE OF PUBLIC SEWERS REQUIRED

38-5-4 **DEPOSIT OF WASTES.** It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City or in any area under the jurisdiction of the City, any human or animal excrement, garbage or other objectionable waste.

38-5-5 **SEWAGE IN NATURAL OUTLET.** It shall be unlawful to discharge to any natural outlet within the City, or in area under the jurisdiction of the City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Code.

38-5-6 **PRIVATE SYSTEM, UNLAWFUL.** Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

38-5-7 **CONNECTION TO SYSTEM REQUIRED.** The owner of all the houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the City and abutting on any street, alley, right-of-way in which there is now located or may in the future be located any public sanitary (or combined) sewer of the City is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Code, within **ninety (90) days** after date of official notice to do so, provided that said public sewer is within **one hundred fifty (150) feet** of the nearest property line.

DIVISION III

PRIVATE SEWAGE DISPOSAL

38-5-8 PRIVATE SEWAGE SYSTEM. Where a public sanitary sewer is not available under the provisions of **Section 38-5-7**, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Division.

38-5-9 PRIVATE SEWER SYSTEM APPROVAL. Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the City. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as deemed necessary by the City. A permit and inspection fee of **Five Dollars (\$5.00)** shall be paid to the City at the time the application is filed. The fee is not refundable.

38-5-10 PRIVATE SEWAGE SYSTEM PERMIT. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the City when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within **three (3) working days** of the receipt of written notice by the City.

38-5-11 PRIVATE SEWAGE SYSTEM DESIGN CRITERIA. The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the State of Illinois Private Sewage Disposal Licensing Act and Code and with the State of Illinois Environmental Protection Agency. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than **ten thousand (10,000) square feet**. No septic tank or cesspool shall be permitted to discharge to any natural outlet unless approved by the State Department of Public Health and the Superintendent.

38-5-12 UTILIZATION OF PUBLIC SEWER. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in **Section 38-5-7**, the building sewer shall be connected to the sewer within **sixty (60) days** and the private sewage disposal system shall be cleaned of sludge and waste material which shall be disposed of in a lawful sanitary and proper manner, and the private disposal system shall be filled with clean bank-run gravel or dirt.

38-5-13 **O & M OF PRIVATE SEWAGE SYSTEM.** The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, and at no expense to the City.

38-5-14 **ADDITIONAL REQUIREMENTS OF PRIVATE SEWAGE SYSTEM.** No statement contained in this Division shall be construed to interfere with any additional requirements that may be imposed by the County or State Health Department or other agencies having lawful jurisdiction.

DIVISION IV

BUILDING SEWERS AND CONNECTIONS

38-5-15 DISTURBING SYSTEM UNLAWFUL. No unauthorized person shall uncover, make any connections with, or opening into; use; alter; or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

38-5-16 COMPLIANCE WITH REGULATING AUTHORITIES. All disposal by any person into the sewer system is unlawful except those discharges in compliance with Federal Standards promulgated pursuant to the Federal Act and more stringent State and local standards.

38-5-17 CLASSES OF PERMITS.

(A) There shall be **two (2) classes** of building sewer permits as follows:

(1) Residential and commercial service.

(2) Service to establishments producing industrial wastes.

(B) In either case, the owner or his agent shall make applications on a special form furnished by the City.

(C) The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent.

38-5-18 COST BORNE BY OWNER. All costs and expenses including labor and material incidental to the installation, connection and maintenance of a lateral sewer line shall be borne by the owner(s). The owner(s) shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation, connection and maintenance of the lateral sewer lines. This Section shall apply even where the lateral sewer line runs under a public street, public right-of-way, or public easement.

38-5-19 SEPARATE SEWER: EXCEPTION. A separate and independent building sewer shall be provided for every building, except that where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

38-5-20 OLD BUILDING SEWERS. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the City, to be of similar material and construction to that required of new sewers.

38-5-21 CONSTRUCTION METHODS. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society of Testing Materials, Water Pollution Control Federation Manual of Practice No. 9, and **Standard Specifications for Water and Sewer Main Construction in Illinois** shall apply.

38-5-22 ELEVATION. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

38-5-23 PROHIBITED CONNECTIONS. No person(s) shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to public sanitary sewer.

38-5-24 BUILDING AND PLUMBING CODE APPLICABLE. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code, or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the American Society of Testing Materials, Water Pollution Control Federation Manual of Practice No. 9, and **Standard Specifications for Water and Sewer Main Construction in Illinois.** All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the City before installation.

38-5-25 CAPACITY OF SEWER. A building sewer permit will only be issued and a sewer connection shall only be allowed if it can be demonstrated that the downstream sewerage facilities, including sewers, pump stations and wastewater treatment facilities, have sufficient reserve capacity to adequately and efficiently handle the additional anticipated waste load.

38-5-26 **INSPECTION.** The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent or his representative after the roof structure is constructed.

38-5-27 **PROTECTION OF PROPERTY.** All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

DIVISION V

USE OF PUBLIC SEWERS

38-5-28 **DISCHARGE OF STORM WATER.** No person shall discharge, or cause to be discharged, any stormwater, surface water, ground water roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

38-5-29 **STORM WATER.** Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the City. Industrial cooling water or unpolluted process waters may be discharged on approval of the City, to a storm sewer, or natural outlet.

38-5-30 **REGULATIONS OF WASTES.** No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(A) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solids, or gas.

(B) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant.

(C) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

(D) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

38-5-31 **HARMFUL EFFECTS OF CERTAIN MATERIALS.** No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the City that such wastes can harm either the sewers, sewage treatment process or equipment; have an adverse effect on the receiving stream; or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the City will give consideration to such factors as the quantities of subject wastes in relation to flows and

velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and maximum limits established by regulatory agencies. The substances prohibited are:

(A) Any liquid or vapor having a temperature higher than **One Hundred Fifty degrees Fahrenheit (150°F). (65°C).**

(B) Any waters or wastes containing toxic or poisonous materials; or oils, whether emulsified or not, in excess of **One Hundred (100) mg/l** or containing substances which may solidify or become viscous at temperatures between **thirty-two (32) and One Hundred fifty degrees Fahrenheit (150°F), (0 and 65°C).**

(C) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of **three-fourths (3/4) horsepower (0.76 hp metric)** or greater shall be subject to the review and approval of the City.

(D) Any waters or wastes containing strong acid, iron pickling wastes, or concentrated plating solution whether neutralized or not.

(E) Any waters or wastes containing iron, chromium, copper, zinc, or similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the City for such materials.

(F) Any waters or wastes containing phenols or other waste odor-producing substances, in such concentration exceeding limits which may be established by the City as necessary after treatment of the composite sewage, to meet the requirements of the State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.

(G) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City in compliance with applicable State or Federal regulations.

(H) Any mercury or any of its compounds in excess of **0.0005 mg/l** as **Hg** at any time except as permitted by the City in compliance with applicable State and Federal regulations.

(I) Materials which exert or cause:

- (1) unusual concentrations or inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate);
- (2) excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);
- (3) unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works;
- (4) unusual volume of flow or concentrations of wastes constituting "slugs" as defined herein.

(J) Waters or wastes containing substances which are not amendable to treatment or reduction by the sewage treatment processes employed, or are amendable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of agencies having jurisdiction over discharge to the receiving waters.

38-5-32 HARMFUL WASTES; APPROVAL.

(A) If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in **Section 38-5-31** of this Division, and/or which are in violation of the standards for pretreatment provided in Chapter 1, "EPA Rules and Regulations", Subchapter D, Water Programs Part 128 Pretreatment Standards, Federal Register Volume 38, No. 215 Thursday, November 8, 1973 and any amendments thereto, and which in the judgment of the City may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the City may:

- (1) reject the wastes;
- (2) require pretreatment to an acceptable condition for discharge; and/or;
- (3) require control over the quantities and rates for discharge; and/or;
- (4) require payment to cover the added costs of handling and treating the wastes not covered by existing taxes or sewer charges, under the provisions of **Section 38-5-38**.

(B) If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the City, and subject to the requirements of all applicable codes, articles, and laws.

(C) The owner of the pretreatment or equalization facilities shall obtain construction and operating permits from the Illinois Environmental Protection Agency prior to the issuance of final approval by the Superintendent.

(D) Where multiple process or discharges are present or contemplated at an industry, the City shall have the authority to require the owner or person to furnish and install more than one control manhole with appurtenances and/or require that all wastewater be discharged through a single control manhole or structure with appurtenances described herein.

38-5-33 INTERCEPTORS PROVIDED.

(A) Grease, oil, and sand interceptors shall be provided in accordance with the Illinois State Plumbing Code to assure the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Village and shall be located as to be readily and easily accessible for cleaning and inspection. All grease interceptors shall be serviced and emptied of accumulated waste content as required or at a minimum of once every **four (4) months** in order to maintain minimum design capability or effective volume of the grease interceptor and to prevent carryover of grease into the sanitary sewer system. All fast food and sit-down restaurants shall install a grease interceptor with a capacity of at least **one thousand five hundred (1,500) gallons**, and designed in accordance with **Appendix "A"**. Food establishments that serve a minimum amount of fried foods such as deli sandwich shops, shall install a grease interceptor with a capacity of at least **one thousand (1,000) gallons**, and designed in accordance with **Appendix "B"**.

(B) Users whose operations cause or allow excessive grease to discharge or accumulate in the Village wastewater collection and treatment system may be liable to the Village for costs related to service calls for sewer line blockages, line cleaning, line and pump repairs, etc. including all labor, materials, and equipment. Failure to pay all service related charges may also be grounds for sewer service discontinuance.

(C) **Maintenance Log.** A grease trap cleaning/maintenance log indicating each pumping for the previous **twenty-four (24) months** shall be maintained by each Food Service Facility. This log shall include the date, time, amount pumped, hauler, and disposal site and shall be kept in a conspicuous location for inspection. Said log shall be made available to the Village or his representative upon request.

(D) **Submittal of Records.** Each user shall submit all cleaning and maintenance records to the Village. The maintenance records shall include the following information:

- (1) Facility name, address, contact person, and phone number.
- (2) Company name, address, phone number, and contact name of person responsible for performing the maintenance, cleaning, pumping, or repair of grease trap.
- (3) Types of maintenance performed.
- (4) Dates maintenance was performed.
- (5) Date of next scheduled maintenance.
- (6) Copies of manifests.
- (7) The user shall be required to submit maintenance records to the Village on an annual basis. Records shall be submitted by **September 1st** of each year. The records shall be submitted to:
Attn: Wastewater Superintendent

(E) The Village will perform periodic inspections of these facilities and shall notify the user of any additional required maintenance or repairs. Upon written notification by the Village, the user shall be required to perform the maintenance and records of said maintenance within **fourteen (14) calendar days**. Upon inspection by the Village the user may be required to install, at his expense, additional controls to provide a complete system which prevents discharges of undesirable materials into the wastewater collection system.

(F) **Control Plan for Fats, Oils, Greases (FOG) and Food Waste.**

- (1) Any new construction, renovation, or expansion of Food Service Facilities shall be required to submit to the Village a FOG and food waste control plan that will effectively control the discharge of undesirable materials into the wastewater collection system.
- (2) Any existing Food Service facilities shall also be required to submit a FOG and food waste control plan that will effectively control the discharge of undesirable materials into the wastewater collection system. Existing facilities shall not be exempt from the requirements of this Section. There will be no "Grandfathering".

(G) **Exceptions to the Above.** Should existing facilities be hampered by space constraints or restrictions caused by unchangeable plumbing, an alternative interceptor may be approved, provided that:

- (1) Said interceptor and installation is endorsed by a licensed plumbing contractor in regard to its operability.
- (2) Said interceptor and installation is endorsed by the Village Engineer.
- (3) Said interceptor and installation is approved by the Superintendent and the Water and Sewer Committee.

Such installations may be subject to more stringent inspections and maintenance schedules.

38-5-34 **FLOW-EQUALIZING FACILITIES.** Where preliminary treatment or flow-equalizing facilities are provided, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

38-5-35 **INDUSTRIAL WASTES CONTROL MANHOLE.** Each industry shall be required to install a control manhole and, when required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessible and safety located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

38-5-36 **INDUSTRIAL WASTE TESTING.**

(A) The owner of any property serviced by a building sewer carrying industrial wastes shall provide laboratory measurements, tests, and analyses of waters and wastes to illustrate compliance with this Code and any special conditions for discharge established by the City or regulatory agencies having jurisdiction over the discharge.

(B) The number, type, and frequency of laboratory analyses to be performed by the owner shall be as stipulated by the City, but no less than once per year the industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with the Federal, State, and local standards are being met. The owner shall report the results of measurements and laboratory analyses to the City at such times and in such a manner as prescribed by the City. The owner shall bear the expense of all measurements, analyses, and reporting required by the City. At such times as deemed necessary the City reserves the right to take measurements and samples for analysis by an outside laboratory service.

38-5-37 **MEASUREMENTS AND TESTS.** All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Code shall be determined in accordance with the latest edition of IEPA Division of Laboratories Manual of Laboratory Methods, and shall be determined at the control manhole provided, or upon suitable samples taken at the control manhole. In the event that no special manhole has been required the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a **twenty-four (24) hour** composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from **twenty-four (24) hour** composites of all outfalls, whereas pH's are determined from periodic grab samples.)

38-5-38 **SPECIAL ARRANGEMENTS.** No statement contained in this Article shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore, in accordance with the Chapter, hereof, by the industrial concern provided such payments are in accordance with Federal and State guidelines for User Charge System and Industrial Cost Recovery System.

DIVISION VI
INSPECTIONS

38-5-39 **DAMAGE.** No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

38-5-40 **INSPECTION AND TESTING.**

(A) The Superintendent and other duly authorized employees of the City, the Illinois Environmental Protection Agency, and the United States Environmental Agency, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Code.

(B) The Superintendent or his representative shall have no authority to inquire into any processes, including metallurgical, chemical, oil refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterway or facilities for waste treatment.

38-5-41 **LIABILITY OF CITY.** While performing the necessary work on private properties referred to in **Section 38-5-40** above, the City or duly authorized employees of the City, the Illinois Environmental Protection Agency, and the United States Environmental Protection Agency shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain conditions as required in **Section 38-5-35**.

38-5-42 **PRIVATE PROPERTY INSPECTIONS.** The Superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within the easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

DIVISION VII - PENALTIES

38-5-43 **NOTIFICATION OF VIOLATION.** Any person found to be violating any provision of this Chapter, except Article VI, shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. The City may revoke any permit for sewage disposal as a result of any violation of any provision of this ordinance, or violation of regulations of other agencies having lawful jurisdiction. Upon revocation of any permit to discharge, the person violating the ordinance or regulation shall cease and desist discharge of wastewater or industrial waste to the public sewer system and treatment works, and shall not continue the discharge in any manner which would violate State, Federal or local pollution control laws and regulations.

38-5-44 **FINE.** Any person who shall continue any violation beyond the time limit provided for in **Section 38-5-43** shall be guilty of a misdemeanor and on conviction thereof shall be fined in the amount not exceeding **Five Hundred Dollars (\$500.00)** for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

38-5-45 **EXPENSE.** Any person violating any of the provisions of this Chapter shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation.

DIVISION VIII - INDUSTRIAL COST RECOVERY

38-5-46 INDUSTRIAL COST RECOVERY REQUIRED. Each industrial user as defined in **Section 38-5-1(J)(iii)** shall pay that portion of any State grant which has been obtained by the City for the financing of the construction of wastewater treatment works allocable to the treatment of the wastewater from such user. Such users share shall not include an interest component.

38-5-47 DETERMINATION OF INDUSTRIAL USER COST. An industrial user's portion of any State grant shall be based on the population equivalents attributable to wastewater of such user tributary to the wastewater treatment works of the City.

The population equivalents shall be determined as follows:

(A) **Volume Population Equivalent.** This population equivalent equals the average daily rate of water consumption as determined by the consumption records of the past year divided by **one hundred (100) gallons** per day (the average domestic water consumption) or, where water consumption does not reflect the actual quantity of wastewater tributary to the treatment works from such user, then the average daily flow as recorded in the control manhole required by **Section 38-5-35**, divided by **one hundred (100) gallons** per day (the average domestic water consumption).

(B) **BOD Population Equivalent.** This population equivalent equals the average daily pounds of BOD in the wastewater as determined by the Superintendent in accordance with **Section 38-5-37** divided by **0.20 pounds** of BOD per day (the average per capita BOD of non-industrial discharges).

(C) **SS Population Equivalent.** This population equivalent equals the average daily pounds of suspended solids in the wastewater from such user as determined by the Superintendent in accordance with **Section 38-5-37** divided by **0.22 pounds** of suspended solids per day (the average per capita SS of non-industrial discharges).

(D) **Cost per Capita.** The dollar cost per capita shall be determined as follows:

$ICR_{Qi}/P.E. = \text{Industrial Cost Recovery per capita (Population Equivalent - P.E.) attributed to flow.}$

$ICR_{Qi}/P.E. = \frac{\text{(Capital Cost of Treatment Facility Attributable to Industry)} \times \text{\%Attributed to Flow}}{\text{Design P.E., Grant Project}}$

$ICR_{Qi}/P.E. = \frac{(\$1,984,149.) \times (0.47) \times .75}{4,792 \text{ P.E.}}$

$$ICR_{Qi}/P.E. = \$145.95/\text{Capita}$$

$$ICR_{BODi}/P.E. = \text{Industrial Cost Recovery per capita (Population Equivalent - P.E.) attributed to BOD.}$$

$$ICR_{BODi}/P.E. = \frac{(\text{Capital Cost of Treatment Facility Attributable to Industry}) \times (\% \text{Attributed to BOD})}{\text{Design P.E., Grant Project}}$$

$$ICR_{BODi}/P.E. = \frac{(\$1,984,149.) \times (0.30) \times .75}{4,792 \text{ P.E.}}$$

$$ICR_{BODi}/P.E. = \$93.16/\text{Capita}$$

$$ICR_{SSi}/P.E. = \text{Industrial Cost Recovery per capita (Population Equivalent - P.E.) attributed to Suspended Solids (SS).}$$

$$ICR_{SSi}/P.E. = \frac{(\text{Capital Cost of Treatment Facility Attributable to Industry}) \times (\% \text{Attributed to SS})}{\text{Design P.E., Grant Project}}$$

$$ICR_{SSi}/P.E. = \frac{(\$1,984,149.) \times (0.23) \times .75}{4,792 \text{ P.E.}}$$

$$ICR_{SSi}/P.E. = \$71.42/\text{Capita}$$

(E) **Cost for Industrial User.** The cost to be recovered from an industrial user (CI) shall be determined as follows:

$$AICR_{Qi} = \frac{\text{Average Daily Flow Gallons}}{\text{Useful Life (Treatment Works)}} = \frac{100}{\text{Useful Life (Treatment Works)}} (\$145.95)$$

$$AICR_{BODi} = \frac{\text{Average Daily BOD, Pounds}}{\text{Useful Life (Treatment Works)}} = \frac{0.22}{\text{Useful Life (Treatment Works)}} (\$93.16)$$

$$AICR_{SSi} = \frac{\text{Average Daily SS, Pounds}}{\text{Useful Life (Treatment Works)}} = \frac{0.22}{\text{Useful Life (Treatment Works)}} (\$71.42)$$

$$CI = AICR_{Qi} + AICR_{BODi} + AICR_{SSi}$$

Where $AICR_{Qi}$ = Annual Industrial Cost Recovery payment attributable to flow.

$AICR_{BODi}$ = Annual Industrial Cost Recovery payment attributable to BOD.

$AICR_{SSi}$ = Annual Industrial Cost Recovery payment attributable to Suspended Solids.

CI = Total Annual Industrial Cost Recovery Payment.

38-5-48 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REQUIRED ADMINISTRATIVE PROCEDURES.

(A) **Charge for Industrial Cost Recovery.** Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay the cost recovery amount determined by **Section 38-5-47** for such industry, divided by the recovery period. Where an industry is connected to a public sewer after the start-up of the facilities constructed under a Federal grant, such industry shall only pay its portion of the Federal grant for each month remaining in the recovery period. Such industry will not be required to pay for those months of the recovery period prior to connection to a public sewer.

(B) **Length of Industrial Cost Recovery Period.** The industrial cost recovery period shall be equal to the useful life of the treatment works which shall be **thirty (30) years** from 1979.

(C) **Payments and Billing Periods for Industrial Cost Recovery.** All industrial users of the City shall pay the cost as determined by **Section 38-5-48(A)** for industrial cost recovery and such payments shall be made monthly on the **tenth (10th) day** of the month immediately following the expiration of the month for which service has been supplied, and such charge shall be payable within **ten (10) days** after rendition thereof, and in the event such bills are not paid within the **ten (10) days**, a service charge of **five percent (5%)** shall be added thereto. An industrial user may wish to fulfill its industrial cost recovery obligation by making a lump sum payment for its entire share of the cost of construction of the treatment works. In this event, such payments may be accepted by the City and either processed as a normal Industrial Cost Recovery payment, or set aside in a separate amount to be drawn on annually for the remainder of the industrial cost recovery period. Lump sum payments by an industry will not relieve an industrial user from the obligation of making additional future payments should its wastewater flow or load increase. Discounts from the total industrial cost recovery requirement will not be given to industrial users making advance or lump sum Industrial Cost Payments. No interest component shall be included in the cost component charged to an industrial user, irregardless of the lump sum or monthly payment method selected by the industrial user. Any interest earned by the City on Industrial Cost Recovery payments set aside will be recoverable in the same manner as if the payments were made as due (**40 CFR 35.928-2a**).

(D) **Delinquency and Termination of Service.** If the delinquency in the payment of the recovery cost continues for a period of more than **thirty (30) days**, the sewer service shall be discontinued. In the event the charges for industrial cost recovery are not paid within **sixty (60) days** after the rendition of that bill, then such service charges shall be deemed and are hereby declared to be delinquent, and thereafter such delinquent charge shall constitute a lien upon the real estate for which such sewer services were supplied. The City Clerk is hereby authorized and directed each month to file sworn statements showing such delinquencies in the office of the Recorder of Deeds of Clinton County, Illinois, and the filing of such statements shall be deemed notice of a lien for the payment of such charges for sewer service.

(E) **Time of First Payment.** The initial payment made by and industrial user which is connected to a public sewer after the start-up of the treatment works constructed with a Federal grant shall be made by the next scheduled due date as defined in **Section 38-5-48(C)** and shall be equal to **one-twelfth (1/12)** of the amount as determined by **Section 38-5-48(C)** times the number of months of service in that calendar year.

(F) **Adjustment of Charge Due to Strength or Volume Changes.** If there is a change in the strength and/or volume introduced into the treatment works by an industrial user as determined by the previous year records, the City shall adjust the users portion of any Federal Grant accordingly.

(G) **Adjustment of Change Due to Plant Improvement Utilizing Federal Grant Funds.** If there is an expansion or upgrading of the treatment works utilizing a Federal grant, each existing industrial user's share shall be adjusted accordingly.

(H) **No Charge for Unused or Unreserved Capacity.** An industrial user's portion of any Federal Grant shall not include any portion of the grant amount allocable to unused or reserved capacity.

(I) **Commitment For Increased Use.** An industrial user's portion of any Federal Grant shall include allowance for the cost of any firm commitment to the City for any increased use by such user.

(J) **Payment to the State of Illinois Required.** The City shall retain **fifty percent (50%)** of the amounts recovered from industrial users. The remainder, together with any interest earned thereon, shall be returned to the United States Treasury, on an annual basis.

(K) **Disposition of Retained Amount.** **Eighty percent (80%)** of the retained amounts, together with interest earned thereon, shall be used solely for the eligible costs of the expansion or reconstruction of treatment works associated with the project and necessary to meet the requirements of the Federal Act and the State of Illinois. The City, prior to commitment of the retained amounts shall obtain written approval of the United States Environmental Protection Agency for any expansion or reconstruction of treatment works associated with the project and necessary to meet requirements of the Federal Act and the State of Illinois. The City, prior to commitment of the retained amounts shall obtain written approval of the United States Environmental Protection Agency for any expansion or reconstruction. The remainder of the retained amounts may be used for such expenditures as the City deems appropriate.

(L) **Investment of Retained Amounts Required.** Pending use, the grantee shall invest the retained amounts for reconstruction and expansion in:

- (1) Obligations of the U.S. Government; or
- (2) Obligations guaranteed as to principal and interest by the U.S. Government or any agency thereof; or
- (3) Shall deposit such amounts in accounts fully collateralized by obligations of the U.S. Government or by obligations fully guaranteed as to principal and interest by the U.S. Government or any agency thereof.

(M) **City Clerk Responsibility.** The City Clerk shall maintain the necessary records for determination of user share of the cost and shall provide the billing and collection services as required.

(N) **City Treasurer Responsibility.** The City Treasurer shall be responsible for the investment and expenditure of all moneys collected for industrial cost recovery in accordance with **Section 38-5-48(J), (K) and (L).**

(O) **Monitoring Required.** The Superintendent shall maintain a program of monitoring industrial user discharges as the City deems necessary, provided that any major contributing industry shall be monitored no less than **twelve (12) times** annually and any industrial user that has a population equivalent as determined by **Section 38-5-1(F)** "Population Equivalent"; greater than or equal to **fifty (50)** shall be monitored no less than once annually. All other industrial users shall be monitored at such frequency as deems necessary by the Superintendent for determination of the population equivalent of the industrial user. The monitoring data collected shall be used to determine the population equivalent in accordance with **Section 38-5-47.**

(P) **Appeal and Arbitration.** The City shall establish industrial cost recovery charges as set forth herein, and in accordance with applicable State and Federal guidelines and requirements, and shall notify any industry which requests a permit to discharge into the public sewerage system of the industrial cost recovery charges to be levied. The notification from the City to the industry shall be in writing, and shall be submitted to the industry within **thirty (30) days** after the industry has made application for a connection/discharge permit and has provided complete and satisfactory information regarding the volume and character of the waste, and has submitted plans for a control manhole with appurtenances, and has received a permit from the Environmental Protection Agency. The City may provide preliminary information regarding industrial cost recovery charges to be levied, but actual charges to be levied shall not be determined until after the above and other stipulations of the Code have been complied with by the industrial user to the satisfaction and approval of the City.

In the event that the industrial user, or other persons affected by the industrial cost recovery system and charges, wishes to have a hearing regarding the reasonableness of the industrial cost recovery charges imposed by the City in accordance with State and Federal regulations, the industry or person shall duly notify the City in writing and request an administrative hearing before the City Council within **thirty (30) days** after the industry has been informed of the actual charges to be levied by the City. Actual discharge of industrial

waste to the City system shall not commence until the industry has issued to the City written concurrence with the industrial cost recovery charges. The City shall conduct the administrative hearing within **thirty (30) days** after receipt or written request for the hearing, and the City shall duly notify the industrial user or person, and other interested parties in writing at least **fifteen (15) days** prior to the hearing date, and identify the time, date, and location of the administrative hearing. The Mayor of the City shall serve as the hearing officer, and all testimony received (including written documents) shall be entered into the records of the City, as in official meeting of the City Council. The notice of the administrative hearing shall be published in the legal notice section of a newspaper of local distribution at least **fifteen (15) days** prior to the date of the hearing. The legal notice shall state the purpose of the hearing, time, date, and place of the hearing. All interested parties shall be given ample opportunity to enter testimony into the record of the administrative hearing.

In the event the City and industrial user cannot agree to the reasonableness of the charges, and the compliance of the charges with regulations set forth by the State and Federal EPA, the industry may request a hearing before representatives of USEPA within **ten (10) days** after the City administrative hearing has been conducted. The City and the industrial user, or the person, shall abide by the decision of USEPA regarding the reasonableness of the industrial cost recovery charges to be levied by the City. In all cases, the Industrial Cost Recovery System and charges shall be in accordance with applicable State and Federal Regulations.

(Q) **Discontinuance of Use By Industrial Users.** If an industrial user discontinues use of the treatment works (including termination of any agreement for use of reserve capacity), its payment for industrial cost recovery will cease. There shall be no requirement for other industrial users using the treatment works at that time to assume the portion of the Industrial Cost Recovery System payment which is unrecovered due to the departure or discontinuance of service by an industrial user.

If the City chooses to require an industrial user to pay termination of services charges allocable to costs associated with the Industrial Cost Recovery System, payment to the City for such charges shall be in accordance with an agreement stipulating such conditions at the time the City and industrial user mutually agree to conditions of service. Such an agreement shall be in writing, and cannot contain an interest component. Funds recovered in such a manner may become the property of the City, unless otherwise stipulated by applicable State or Federal regulation.

(R) **Reserve Capacity.** The City may choose to permit industrial users to reserve capacity in the treatment works. Such capacity shall be reserved through a formal, written agreement which shall be subject to requirements of the Industrial Cost Recovery System contained herein and in State and Federal regulations.

If the City agrees to allow an industrial user to reserve capacity in the treatment works, the industrial user shall be required to pay the full amount of the industrial cost recovery charges calculated on the full capacity plus additional industrial cost recovery charges for use above the limits of the reserved capacity or any element thereof.

In the event the treatment works are expanded or upgraded in the future with State or Federal grant assistance, an industrial user that has executed a reserve capacity agreement and has made industrial cost recovery payments based upon full reserved capacity will not incur additional industrial cost recovery charges associated with the cost of expansion of capacity of existing unit processes associated with treatment, until the industrial user's actual use of the treatment works exceeds its reserved, agreed upon capacity.

Industrial users without reserved capacity contracts will be required to pay an additional industrial cost recovery charges associated with the cost of expanding or upgrading the treatment works.

38-5-49 EFFECTIVE DATE OF RATES. The rates and service charges for User Charges and Industrial Cost Recovery established herein shall be effective as of **September 5, 1978**, and on bills to be rendered for the next succeeding quarter being **October 1, 1978**, for quarterly users.

ARTICLE VI - WATER SYSTEM REGULATIONS

DIVISION I - GENERALLY

38-6-1 APPLICATION FOR SERVICE CONNECTIONS TO WATERWORKS SYSTEM. An applicant desiring a water service connection with the City Waterworks System shall file a written application at the City Hall, signed by the owner of the property for which the tap or service connection is desired, or by the duly authorized agent of such owner. The application shall be accompanied by payment of the fee prescribed in **Section 38-2-15** to cover the cost of such service connection. In the event the application is made by an agent for the owner, then the application shall also be accompanied by the written authority of the owner to the agent for the making of the application. As soon as possible thereafter, the Superintendent shall authorize a service tap connection to be made and a service line laid to the lot line of the applicant's property.

38-6-2 ALL SERVICE TO BE BY METER. All water service, whether for domestic, commercial or industrial use shall be metered. All meters shall be so placed and installed so as to render the same accessible at all times for the purpose of reading or repairing and so as to be free from danger of freezing. Meters outside of a building shall be set in a suitable meter box approved by the Superintendent. Water shall not be turned on for new connections until the meter has been installed and all other requirements of this Chapter on the part of the property owner or the applicant have been fully complied with.

38-6-3 METER DAMAGED. Whenever a meter is found to have been damaged by hot water being forced back into it from the consumer's hot water or heating apparatus, or for any other cause within control of the consumer, the consumer shall pay the City for the actual cost of the removal, repair and replacement of the damaged meter and all previous water bills shall be corrected on an estimated basis to cover such period as it appears that the meter was out of order for such damage.

38-6-4 DANGEROUS USAGE. The City shall have the right to refuse water service or to discontinue water service without notice at any time to any consumer if the City finds any apparatus or appliances, the operation of which will be detrimental to the water system of the City or to any or all of its consumers. Standpipes, hydrants, gate valves and any other apparatus that cause water hammer or any danger to the water system or other customer's plumbing shall be immediately repaired or removed upon notice from the City or, at its option, the City may immediately discontinue the service without notice and without any liability for damages direct or resulting therefrom.

38-6-5 **ELECTRIC GROUND WIRES.** All persons are strictly forbidden to attach any electric ground wire to any plumbing or water piping which is or may be connected to any water service pipe, water meter or water main belonging to the City. The City will hold the owner of the premises responsible and liable for any damage to the property or injury to the employees of the City caused by such ground wire. All owners and consumers shall remove any existing ground wires immediately upon written notice from the City. If not so disconnected within **five (5) days** of written notice, the City, through its officials, may enter the property and remove such ground wires and the consumer shall pay all costs.

38-6-6 **LIABILITY OF OWNER.** The owner shall be liable for any future expenses for the alteration and repair, extension or other changes to the water line up to and where it connects with the City water main.

38-6-7 **SHORTAGE AND PURITY OF SUPPLY.** The City shall not be held responsible for or in any manner liable to any person, company, consumer, or public body for any claim or damage, either direct or resultant because of any shortage of water supply or any shut-off of water supply for any reason, any bursting or leakage of either the consumer's or City's mains, pipes and fixtures, any pollution or impurity in water supply, or any fire or water damage.

38-6-8 **LAWN WATERING.** The right is reserved to suspend the use of lawn fountains, hoses for sprinkling lawns and gardens and car washing whenever, in the opinion of the City Council, public exigencies require it.

38-6-9 **NON-COMPLIANCE WITH RULES.** If any consumer fails to comply fully with any of the rules and regulations in force, the City shall notify the consumer of such failure. If the consumer does not remedy the same as the rules provide and within a reasonable time, the City shall have the right to discontinue service. Except in cases of non-payment, emergency, necessity, or as otherwise provided, the City will not discontinue service for violation of any rules until **five (5) days** after notice has been given and the existing violation has not been remedied.

38-6-10 **INSPECTION.**
(A) **Access to Premises.** The City shall have access to all portions of the premises of the consumer at any reasonable time for inspection of the use of water and the consumer's pipe, fixtures, plumbing, and any other apparatus in any manner connected to the Water System of the City. The City shall have the right and option to demand change or discontinuance of use or to require any repair, change, removal or improvement of any pipe,

fixture, plumbing or other apparatus that would, in any manner, affect the water supply or system of the City or the supply or fixtures of other consumers.

(B) **Meters Open to Inspection.** All water meters and water fixtures, connections and appurtenances on private property connected with the Waterworks System of the City shall be open to the inspection of the proper officers and employees of the City at all reasonable hours.

38-6-11 FIRE HYDRANTS.

(A) All hydrants shall be owned, maintained and used only by the City. Use of water from the fire hydrants by contractors and others shall be only upon permission by the City after approved application to the City.

(B) The City shall not be held liable and will not assume any responsibility for the condition of any fire hydrant inside or outside the City Limits or the pressure or amount of water obtainable therefrom or any damages, either direct or resultant because of the condition, pressure, or amount of water available from any fire hydrant.

(C) All public fire hydrants outside any City Limits which are owned by the City will be maintained in as good order as reasonably possible, but the City will not undertake or assume any responsibility or liability for their condition, use or abuse. Such public fire hydrants shall be used only for the purpose of extinguishing fire, except when the City may issue a special permit for their use to contractors who shall then be responsible for the hydrants and the use of water from them.

38-6-12 LEAKS. Whenever a water leak occurs between the curb box and the water meter, when the meter is located in the building, the City shall give the property owner written notice of same stating that the leak shall be repaired within **five (5) days**. If the property owner does not cause the leak to be repaired within **five (5) days**, the City shall bill the property owner for wasted water at the rate of **three thousand six hundred (3,600) gallons** per day from the date of the notice to repair the leak. The water wasted shall be charged for at the water rates then in effect. The City shall have the option of terminating the water service.

38-6-13 - 38-6-15 RESERVED.

DIVISION II - CROSS-CONNECTION CONTROL

38-6-16 **REQUIREMENTS.** All plumbing installed within the City shall be installed in accordance with the **Illinois Plumbing Code, 77 Ill. Adm. Code 890.** If, in accordance with the **Illinois Plumbing Code,** or if, in the judgment of the City Superintendent, an approved backflow prevention device is necessary for the safety of the public water supply system, the Superintendent shall give notice to the water customer to install such an approved device immediately. The water customer shall, at his own expense, install such an approved device at a location and in a manner in accordance with the **Illinois Plumbing Code, Illinois Environmental Protection Agency** and all applicable local regulations, and shall have inspections and tests made of such approved devices upon installation and as required by the **Illinois Plumbing Code, Illinois Environmental Protection Agency and local regulations.**

38-6-17 **PRIVATE CONNECTION UNLAWFUL.** No person shall establish or permit to be established or maintain or permit to be maintained any connection whereby a private, auxiliary or emergency water supply other than the regular public water supply of the City enters the supply or distribution system of the municipality unless such private, auxiliary or emergency water supply and the method of connection and use of such supply shall have been approved by the City Superintendent and the **Illinois Environmental Protection Agency.**

38-6-18 **INVESTIGATION BY SUPERINTENDENT.** It shall be the duty of the City Superintendent to cause surveys and investigations to be made of commercial, industrial and other properties served by the public water supply to determine whether actual or potential hazards to the public water supply may exist. Such surveys and investigations shall be made a matter of public record and shall be repeated at least every **two (2) years,** or as often as the Superintendent shall deem necessary. Records of such surveys shall be maintained and available for review for a period of at least **five (5) years.**

38-6-19 **CROSS-CONNECTION CONTROL INSPECTOR.** The approved cross-connection control device inspector shall have the right to enter at any reasonable time any property served by a connection to the public water supply or distribution system of the City for the purpose of verifying the presence or absence of cross-connections, and that the Superintendent or his designated authorized agent shall have the right to enter at any reasonable time any property served by a connection to the public water supply or distribution system of the City for the purpose of verifying information submitted by the customer regarding the required cross-connection control inspection. On demand, the owner, lessee(s) or occupants of any property so served shall furnish to the Superintendent any information which he may request regarding the piping system or systems or water use on such property. The refusal of such information when demanded shall, within the discretion of the Superintendent, be deemed evidence of the presence of improper connections as provided in this Code.

38-6-20 DISCONTINUANCE OF SERVICE. The City Superintendent is hereby authorized and directed to discontinue, after reasonable notice to the occupants thereof, the water service to any property wherein any connection in violation of the provisions of this Code is known to exist, and to take such other precautionary measures as he may deem necessary to eliminate any danger of contamination of the public water supply distribution mains. Water service to such property shall not be restored until such conditions have been eliminated or corrected in compliance with the provisions of this Code and until a reconnection fee of **Fifty Dollars (\$50.00)** is paid to the City. Immediate disconnection with verbal notice can be effected when the Superintendent is assured that imminent danger of harmful contamination of the public water supply system exists. Such action shall be followed by written notification of the cause of disconnection. Immediate disconnection without notice to any party can be effected to prevent actual or anticipated contamination or pollution of the public water supply, provided that, in the reasonable opinion of the City Superintendent or the **Illinois Environmental Protection Agency**, such action is required to prevent actual or potential contamination or pollution of the public water supply. Neither the public water supply, the Superintendent or agents or assigns shall be liable to any customer for any injury, damages or lost revenues which may result from termination of the customer's water supply in accordance with the terms of this Code, whether or not said termination was with or without notice.

38-6-21 CONTAMINATION COSTS. The consumer responsible for back-siphoned material or contamination through backflow must bear the cost of clean-up of the potable water supply system if contamination of the potable water supply system occurs through an illegal cross-connection or an improperly installed, maintained or repaired device or a device which has been bypassed.

38-6-22 GENERAL POLICY. The rules and regulations on cross-connection control, which are marked Exhibit "B", attached hereto and made a part hereof, be and the same are hereby approved and adopted and shall be enforced by the City.

38-6-23 - 38-6-30 RESERVED.

EXHIBIT "B"

Section 1: Cross-Connection Control -- General Policy

A. **Purpose.** The Purpose of these Rules and Regulations is:

1. To protect the public water supply system from contamination or pollution by isolating within the customer's water system contaminants or pollutants which could backflow through the service connection into the public water supply system.
2. To promote the elimination or control of existing cross-connections, actual or potential, between the public or consumer's potable water system and non-potable water systems, plumbing fixtures and sources or systems containing substances of unknown or questionable safety.
3. To provide for the maintenance of a continuing program of cross-connection control which will prevent the contamination or pollution of the public and consumer's potable water systems.

B. **Application.** These Rules and Regulations shall apply to all premises served by the public potable water supply system of the City of Breese.

C. **Policy.** The owner or official custodian shall be responsible for protection of the public water supply system from contamination due to backflow or back-siphonage of contaminants through the customer's water service connection. If, in the judgment of the Superintendent of Water or his authorized representative, an approved backflow prevention device is necessary for the safety of the public water supply system, the Superintendent of Water shall give notice to the consumer to install such approved backflow prevention device at each service connection to the premises. The consumer shall immediately install such approved device or devices at his own expense, failure, refusal or inability on the part of the consumer to install such device or devices immediately shall constitute grounds for discontinuing water service to the premises until such device or devices have been installed. The consumer shall retain records of installations, maintenance, testing, and repair as required in **Section 5D(4)** below for a period of at least **five (5) years**.

Section 2. Definitions

A. The following definitions shall apply in the interpretation and enforcement of these regulations:

1. "Fixed proper air gap" means the obstructed vertical distance through the free atmosphere between the water discharge point and the flood level rim of the receptacle.
2. "Agency" means Illinois Environmental Protection Agency.
3. "Approved" means backflow prevention devices or methods approved by the Research Foundation for Cross-Connection Control of the University of Southern California, Association of State Sanitary Engineers, American Water Works Association, American National Standards Institute or certified by the National Sanitation Foundation.
4. "Auxiliary water system" means any water source or system on or available to the premises other than the public water supply system and includes the water supplied by the system. These auxiliary waters may include water from another purveyor's public water supply system; or water from a source such as wells, lakes, or streams, or process fluids; or used water. These water may be polluted or contaminated or objectionable or constitute a water source or system over which the water purveyor does not have control.
5. "Backflow" means the flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water system from any source other than the intended source of the potable water supply.
6. "Backflow prevention device" means any device, method, or type of construction intended to prevent backflow into a potable water system. All devices used for backflow prevention in Illinois must meet the standards of the Illinois Public Code and the Illinois Environmental Protection Agency.
7. "Consumer" or "Customer" means the owner, official custodial or person in control of any premises. A building plumbing system is considered to be a customer's water system.
8. "Consumer's water system" means any water system located on the customer's premises. A building plumbing system is considered to be a customer's water system.

9. "Contamination" means an impairment of the quality of the water by entrance of any substance to a degree which could create a health hazard.
10. "Cross-connection" means any physical condition or arrangement between two otherwise separate piping systems, one of which contains potable water and the other substance of unknown or questionable safety or quality, whereby there may be a flow from one system into the other.

Direct cross-connection means a cross-connection formed when a water system is physically joined to a source of unknown or unsafe substance.

Indirect cross-connection means a cross-connection through which an unknown substance can be forced, drawn by vacuum or otherwise introduced into a safe potable water system.

11. "Double check valve assembly" means an assembly composed of single, independently acting check valves approved under ASSE Standard 1015. A double check valve assembly unit must include tight shutoff valves located at each end of the assembly and suitable connections for testing the watertightness of each check valve.
12. "Health hazard" means any condition, device or practice in a water system or its operation resulting from a real or potential danger to the health and well-being of consumers. The word "severe" as used to qualify "health hazard" means a hazard to the health of the user that could be expected to result in death or significant reduction in the quality of life.
13. "Inspection" means a plumbing inspection to examine carefully and critically all materials, fixtures, piping and appurtenances, appliances, and installations of a plumbing system for compliance with requirements of the Illinois Plumbing Code, 77 IL Adm. Code 890.
14. "Non-potable water" means water not safe for drinking, personal or culinary use as determined by the requirements of 35 IL Adm. Code 604.

15. "Plumbing" means the actual installation, repair, maintenance, alteration or extension of a plumbing system by any person. Plumbing includes all piping, fixtures, appurtenances and appliances for a supply of water for all purposes, including without limitation lawn sprinkler system, from the source of a private water supply on the premises or from the main in the street, alley or at the curb to, within and about any building or buildings where a person or persons live, work or assemble. Plumbing includes all piping, fixtures, appurtenances and appliances for a building drain and a sanitary drainage and related ventilation system of any building or buildings where a person or persons live, work or assemble from the point of connection of such building drain to the building sewer or private sewage disposal system **five (5) feet** beyond the foundation walls.
16. "Pollution" means the presence of any foreign substance (organic, inorganic, radiological or biological) in water that tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water.
17. "Potable water" means water which meets the requirements of 35 IL Adm. Code 604 for drinking culinary and domestic purposes.
18. "Potential Cross-Connection" means a fixture or appurtenance with threaded hose connection, tapered spout, or other connection which would facilitate extension of the water supply line beyond its legal termination point.
19. "Process fluid(s)" means any fluid or solution which may be chemically, biologically or otherwise contaminated or polluted in a form or concentration such as would constitute a health, pollutional, or system hazard if introduced into the public or a consumer's potable water system. This includes but is not limited to:
 - a. polluted or contaminated waters;
 - b. process waters;
 - c. used waters originating from the public water supply system which may have deteriorated in sanitary quality;
 - d. cooling waters;
 - e. questionable or contaminated natural waters taken from wells, lakes, streams or irrigation systems;
 - f. chemicals in solution or suspension;

- g. oils, gases, acids, alkalis and other liquid and gaseous fluids used in industrial or other processes, or for fire fighting purposes.
20. "Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least **fifteen (15)** service connections or which regularly serve at least **twenty-five (25) persons** at least **sixty (60) days** per year. A public water supply is either a "community water supply" or a "non-community water supply."
 21. "Reduced pressure principle backflow prevention device" means a device containing a minimum of two independently acting check valves, together with an automatically operated pressure differential relief valve located between the two check valves and approved under ASSE Standard 1013. During normal flow and at the cessation of normal flow, the pressure between these two checks shall be less than the supply pressure. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check valves at less than the supply pressure. The unit must include tightly closing shutoff valves located at each end of the device, and each device shall be fitted with properly located test cocks.
 22. "Service connection" means the opening, including all fittings and appurtenances, at the water main through which water is supplied to the user.
 23. "Survey" means the collection of information pertaining to a customer's piping system regarding the location of all connections to the public water supply system and must include the location, type and most recent inspection and testing date of all cross-connection control devices and methods located within that customer's piping system. The survey must be written form, and should not be an actual plumbing inspection.

24. "System hazard" means a condition through which an aesthetically objectionable or degrading material not dangerous to health may enter the public water supply system or a consumer's potable water system.
25. "Used water" means any water supplied by a public water supply system to a consumer's water system after it has passed through the service connection and is no longer under the control of the water supply official custodian.
26. "Water purveyor" means the owner or official custodian of a public water system.

Section 3. Water System

A. The water system shall be considered as made up of two parts: the public water supply system and the consumer's water system.

B. The public water supply system shall consist of the source facilities and the distribution system, and shall include all those facilities of the potable water system under the control of the Superintendent of Water up to the point where the consumer's water system begins.

C. The source shall include all components of the facilities utilized in the production, treatment, storage and delivery of water to the public water supply distribution system.

D. The public water supply distribution system shall include the network of conduits used to deliver water from the source to the consumer's water system.

E. The consumer's water system shall include all parts of the facilities beyond the service connection used to convey water from the public water supply distribution system to points of use.

Section 4. Cross-Connection Prohibited

A. Connections between potable water systems and other systems or equipment containing water or other substances of unknown or questionable quality are prohibited except when and where approved cross-connection control devices or methods are installed, tested and maintained to insure proper operation on a continuing basis.

- B.
 - 1. No physical connection shall be permitted between the potable portion of a supply and any other water supply not of equal or better bacteriological and chemical quality as determined by inspection and analysis by the Agency.
 - 2. There shall be no arrangement or connection by which an unsafe substance may enter a supply.

Section 5. Survey and Investigations

A. The consumer's premises shall be open at all reasonable times to the approved cross-connection control devices inspector for the inspection of the presence or absence of cross-connections within the consumer's premises, and testing, repair and maintenance of cross-connection control devices within the consumer's premises.

B. On request by the Superintendent of Water, or his authorized representative, the consumer shall furnish information regarding the piping system or systems or water use within the customer's premises. The consumer's premises shall be open at all reasonable times to the Superintendent of Water for the verification of information submitted by the inspection consumer to the public water supply custodian regarding cross-connection inspection results.

C. It shall be the responsibility of the water consumer to arrange periodic surveys of water use practices on his premises to determine whether there are actual or potential cross-connections to his water system through which contaminants or pollutants could backflow into his or the public potable water system. All cross-connection control or other plumbing inspections must be conducted in accordance with **225 ILCS 320/3(I)**.

D. It is the responsibility of the water consumer to prevent backflow into the public water system by ensuring that:

- 1. All cross-connections are removed; or approved cross-connection control devices are installed for control of backflow and back-siphonage.
- 2. Cross-connection control devices shall be installed in accordance with the manufacturer's instructions.
- 3. Cross-connection control devices shall be inspected at the time of installation and at least annually by a person approved by the Agency as a cross-connection control device inspector (CCCDI). The inspection fee of mechanical devices shall include physical testing in accordance with the manufacturer's instructions.

4. Testing and Records
 1. Each device shall be tested at the time of installation and at least annually or more frequently if recommended by the manufacturer.
 2. Records submitted to the community public water supply shall be available for inspection by Agency personnel in accordance with **415 ILCS 5/4(e)**.
 3. Each device shall have a tag attached listing the date of most recent test, name of CCCDI, and type and date of repairs.
 4. A maintenance log shall be maintained and include:
 - a. date of each test;
 - b. name and approval number of person performing the test;
 - c. test results;
 - d. repairs or servicing required;
 - e. repairs and date completed; and
 - f. serving performed and date completed.

Section 6. Where Protection is Required

A. An approved backflow device shall be installed on all connections to the public water supply as described in the Plumbing Code, 77 IL Adm. Code 890 and the Agency's regulations 35 IL Adm. Code 680. In addition, an approved backflow prevention device shall be installed on each service line to a consumer's water system serving premises or potential hazards to the public water supply system exist.

B. An approved backflow prevention device shall be installed on each service line to a consumer's water system serving premises where the following conditions exist:

1. Premises having an auxiliary water supply, unless such auxiliary supply is accepted as an additional source by the Superintendent of Water and the source is approved by the Illinois Environmental Protection Agency.
2. Premises on which any substance is handled which can create an actual or potential hazard to the public water supply system. This shall include premises having sources or systems containing process fluids or water originating from the public water supply system which are no longer under the sanitary control of the Superintendent of Water.

3. Premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete cross-connection survey.
4. Premises having a repeated history of cross-connections being established or re-established.

C. An approved backflow device shall be installed on all connections to the public water supply as described in the Plumbing Code, 77 IL Adm. Code 890 and the Agency's regulations 35 IL Adm. Code 653. In addition, an approved backflow prevention device shall be installed on each service line to a consumer's water system serving, but not necessarily limited to, the following types of facilities unless the Superintendent of Water determines that no actual or potential hazard to the public water supply system exist:

1. Hospitals, mortuaries, clinics, nursing homes.
2. Laboratories.
3. Piers, docks, waterfront facilities.
4. Sewage treatment plants, sewage pumping stations, or storm water pumping stations.
5. Food or beverage processing plants.
6. Chemical plants.
7. Metal plating industries.
8. Petroleum processing or storage plants.
9. Radioactive material processing plants or nuclear reactors.
10. Car Washes.
11. Pesticide, or herbicide or extermination plants and trucks.
12. Farm service and fertilizer plants and trucks.

Section 7. Type of Protection Required

A. The type of protection required under Section 6.1, 6.2 and 6.3 of these regulations shall depend on the degree of hazard which exists as follows:

1. An approved fixed proper air gap separation shall be installed where the public water supply system may be contaminated with substances that could cause a severe health hazard.
2. An approved fixed proper air gap separation or an approved reduced pressure principle backflow prevention device shall be installed where the public water supply system may be contaminated with a substance that could cause a system or health hazard.

3. An approved fixed proper air gap separation or an approved reduced pressure principle backflow prevention device shall be installed where the public water supply system may be polluted with substances that could cause a pollution hazard not dangerous to health.

B. The type of protection required under Section 6.4 of these regulations shall be an approved fixed proper air gap separation or an approved reduced pressure principle backflow prevention device.

C. Where a public water supply or an auxiliary water supply is used for a fire protection system, reduced pressure principle backflow preventers shall be installed on fire safety systems connected to the public water supply when:

1. the fire safety system contains antifreeze, fire retardant or other chemicals;
2. water is pumped into the system from another source;
3. water flows by gravity from a non-potable source; or water can be pumped into the fire safety system from any other source;
4. there is a connection whereby another source can be connected to the sprinkler system.

Section 8. Backflow Prevention Devices

A. All backflow prevention devices or methods required by these rules and regulations shall be approved by the Research Foundation for Cross-Connection Control of the University of Southern California, American Water Works Association, American Society of Sanitary Engineering, or American National Standards Institute or certified by the National Sanitation Foundation to be in compliance with applicable industry specification.

B. Installation of approved devices shall be made in accordance with 35 IL Adm. Code 653.802, and only as specified by the Research Foundation for Cross-Connection Control of the University of Southern California or applicable industry specifications. Maintenance as recommended by the manufacturer of the device shall be performed. Manufacturer's maintenance manual shall be available on-site.

Section 9. Inspection and Maintenance

A. It shall be the duty of the consumer at any premises on which backflow prevention devices required by these regulations are installed to have inspection, tests, maintenance and repair made in accordance with the following schedule or more often where inspections indicate a need or are specified in manufacturer's instructions.

1. Fixed proper air gap separations shall be inspected to document that a proper vertical distance is maintained between the discharge point of the service line and the flood level rim of the receptacle at the time of installation and at least annually thereafter.
2. Double check valve assemblies shall be inspected and tested at time of installation and at least annually thereafter, and required service performed within **five (5) days**.

B. Testing shall be performed by a person who has been approved by the Agency as competent to service the device. Proof of approval shall be in writing.

C. Each device shall have a tag attached listing the date of most recent test or visual inspection, name of tester, and type and date of repairs.

- D. A maintenance log shall be maintained and include:
1. date of each test or visual inspection;
 2. name and approval number of person performing the test or visual inspection;
 3. test results;
 4. repairs or servicing required;
 5. repairs and date completed; and
 6. servicing performed and date completed.

E. Whenever backflow prevention devices required by these regulations are found to be defective, they shall be repaired or replaced at the expense of the consumer without delay.

F. Backflow prevention devices shall not be bypassed, made inoperative, removed or otherwise made ineffective without specific authorization by the Superintendent of Water.

Section 10. Booster Pumps

A. Where a booster pump has been installed on the service line to or within any premises, such pump shall be equipped with a low pressure cut-off device designed to shut-off the booster pump when the pressure in the service line on the suction side of the pump drops to 20 psi or less.

B. It shall be the duty of the water consumer to maintain the low pressure cut-off device in proper working order and to certify to the Superintendent of Water, at least once a year, that the device is operable.

Section 11. Violations

A. The Superintendent of water shall deny or discontinue, after reasonable notice to the occupants thereof, the water service to any premises wherein any backflow prevention device required by these regulations is not installed, tested, maintained and repaired in a manner acceptable to the Superintendent of Water, or if it is found that the backflow prevention device has been removed or bypassed, or if an unprotected cross-connection exists on the premises, or if a low pressure cut-off required by these regulations is not installed and maintained in working order.

B. Water service to such premises shall not be restored until the consumer has corrected or eliminated such conditions or defects in conformance with these regulations and to the satisfaction of the Superintendent of Water, and the required reconnection fee is paid.

DIVISION III - EXTENSION OF MAINS

38-6-31 **MAIN EXTENSION AGREEMENTS.** Upon application for water service in areas not served by a City-owned water main, the City may, with approval of the City Council, authorize the extension of the main at the expense of the applicant.

38-6-32 **EASEMENTS.** Applicants for main extensions shall deliver, without cost to the City, permanent easements or rights-of-way when necessary for the installation and maintenance of the extensions or subsequent additions thereto. The City shall not be obligated to authorize any construction until all requirements of this Chapter have been met.

38-6-33 **SIZE AND TYPE.** The City reserves the right to determine and specify the diameter and type of pipe required to provide the service requested, and subject to the requirements of municipal authorities, its location within or without the limits of a street. The City further reserves the right to install a main larger in diameter than the main required to render the service requested, in which case, the City will pay the difference in cost.

38-6-34 **TITLE.** Title to all main extensions shall be vested in the City and the City shall have the right to further extend any main installed in and to other streets or premises without repayment or refund to any applicant. However, the City reserves the right to consider extensions made at the applicant's expense and without written agreement as to service lines. Upon such lines, the City will set a meter at the beginning of the extension to measure all water used and title to the line beyond the meter will be vested in the customer who shall be responsible for maintenance and replacement, when necessary.

38-6-35 **MAINTENANCE AND REPLACEMENT.** The City, at its own expense, shall maintain and when necessary, replace the City-owned mains used to supply water to its customers, and if adequate service requires the reconstruction or replacement of such mains, the mains shall be reconstructed or replaced by the City at its expense.

EXHIBIT "C"

COMMUNICATIONS ATTACHMENT CODE

ARTICLE I – DEFINITIONS

Section 1.1 For the purposes of this Code, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Article or Paragraph of this Code. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. Affiliate: when used in relation to a Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with the Licensee.

B. Applicable Standards: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Code, and/or other reasonable safety and engineering requirements of Utility or other federal, state or local authority with jurisdiction over Utility Facilities.

C. Assigned Space: means space on Utility's Poles that can be used, as defined by the Applicable Standards, for the attachment of Communications Facilities for the provision of Communications Service. See drawings in Appendix E.

D. Attaching Entity: means any public or private entity, including a Licensee, that places an Attachment on Utility's Pole or in Utility's conduit system in order to provide Communications Service.

E. Attachment(s): means Communications Facilities that are utilized to provide Communications Service and that are placed directly on Utility's Poles or Overlash⁴ed onto an existing Attachment, or which are placed within Utility's Conduit, but does not include a service drop attached to a single Pole where the Licensee has an existing Attachment on such Pole.

F. Capacity: means the ability of a Pole or Conduit segment to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

G. Climbing Space: means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable Utility employees and contractors to safely climb, access and work on Utility Facilities and equipment.

H. Common Space: means space on Utility's Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between attaching entities and electric Utility Facilities.

I. Communications Facilities: means wire or cable facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. The term "Communications Facilities" also includes equipment utilized to provide wireless Communications Services.

J. Communications Service: means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities, but does not include any such transmission or receipt by Utility when utilized to provide internal, non-commercial communications related to the operation of the Utility or non-commercial governmental communications.

K. Conduit System: means Utility's Conduit, Innerduct, manholes, vaults, risers, pull-boxes and trenches.

L. Innerduct: means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.

M. Joint Owned Pole: means any Pole that is owned jointly by Utility and another entity, the Joint Pole Owner.

N. Joint Owned Pole Custodian: means the Joint Pole Owner who has been tasked with primary responsibility for the administration and management of the Pole. In the absence of notice to the contrary from a Joint Pole Owner, Utility shall be deemed to be the Joint Owned Pole Custodian.

O. Joint Pole Owner: means other public utilities or telecommunications carriers which own Poles that are jointly owned by Utility and such other entity.

P. Licensee: means any provider of Communications Services wishing to install and maintain, Communications Facilities and associated communications equipment on the City's Poles or in the City's conduit system to provide Communications Services to the public and the Affiliates, authorized successors and assignees of such provider of Communications Services.

Q. Make-Ready Work: means all work, as reasonably determined by Utility, required to accommodate a Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming where permitted by Franchise (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, or Conduit clearing.

R. Occupancy: means the use or specific reservation of Assigned Space for Attachments on the same Utility Pole or portion of Utility Conduit.

S. Overlash: means to place an additional wire or cable Communications Facility onto an existing Attachment.

T. Pedestals/Vaults/Enclosures: means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that shall not be attached to Utility Poles. (See Appendix D – Specifications).

U. Permit: means a written or electronic authorization (See Appendix C) of Utility for a Licensee to make or maintain Attachments to specific Utility Poles or spans of Conduit pursuant to the requirements of this Code.

V. Pole: means a pole owned by Utility used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities.

W. Post-Construction Inspection: means the survey inspection required by Utility to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

X. Pre-Construction Survey: means all work or operations required by Applicable Standards and/or Utility to determine the potential Make-Ready Work necessary to accommodate a Licensee's Communications Facilities on a Pole or within a span of Conduit. Such work includes, but is not limited to, field inspection and administrative processing. The Pre-Construction Inspection shall be coordinated with Utility and include the Licensee's professional engineer.

Y. Tag: means to place distinct markers on wires and cables, coded by color or other means specified by Utility and/or applicable federal, state or local regulations, that will readily identify the type of Attachment (e.g., cable TV, telephone, high-speed broadband data, public safety) and its owner.

Z. Utility and Utility Facilities: means the City of Breese and all personal property and real property owned or controlled by Utility, including Poles and Conduit System.

ARTICLE II – SCOPE OF CODE

Section 2.1. **Grant of License.** Subject to the provisions of this Code, upon notification by a provider of Communications Services that it seeks to attach communications facilities to Utility's Poles or place communications facilities in Utility's Conduit System, Utility shall grant Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Permitted Attachments to Utility's Poles, including Joint Owned Poles, and to install its Communications Facilities within Utility's Conduit.

Section 2.2 **Licensee and Utility Bound by Code.** Licensee and Utility agree to be bound by all provisions of this Code to the extent not superceded by the specific terms of a prior existing valid Joint Ownership Agreement. New Attachments to Jointly

Owned Poles shall be governed by said Joint Ownership Agreement in lieu of this Code to the extent that the specific terms in the Joint Ownership Agreement are inconsistent with the terms of this Code. Licensee's use of Joint Owned Poles shall be controlled by this Code and the Permit(s) issued pursuant to this Code unless and until this Code or any Permit is found to be contrary to a specific term or provision of a prior existing agreement with a Joint Pole Owner that is valid and in force at the time. Licensee shall notify Utility and Utility shall notify Licensee immediately upon discovery or notice from a Joint Pole Owner that such an issue exists. Utility shall use its best efforts to resolve any such issues with the Joint Pole Owner. To the extent known by Utility during the permitting process the Utility shall notify the Licensee of any unique requirements with respect to specific Poles arising out of Joint Ownership.

Section 2.3 **Permit Issuance Conditions.** Utility will issue a Permit(s) to Licensee only when Utility determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Code, and (iii) such Permit(s) comply with all Applicable Standards.

Section 2.4 **Reserved Capacity.** Access to Assigned Space on Utility Poles will be made available to Licensee with the understanding that such access is to Utility's reserved Capacity only. On giving Licensee at least **thirty (30) calendar days** prior notice, Utility may reclaim such reserved Capacity anytime during the period following the installation of Licensee's Attachment in which this Code is effective if required for Utility's future electric service use, including the attachment of communications lines for internal Utility operational or governmental communications requirements. Utility shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with **Article IX**.

Section 2.5 **No Interest in Property.** No use, however lengthy, of any Utility Facilities, and no payment of any fees or charges required under this Code, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Code, nor any Permit granted under this Code, shall constitute an assignment of any of Utility's rights to the Utility Facilities. Notwithstanding anything in this Code to the contrary, Licensee shall, at all times, be and remain a licensee only.

Section 2.6 **Licensee's Right to Attach.** Nothing in this Code, other than a Permit issued pursuant to **Article VI**, shall be construed as granting Licensee any right to attach Licensee's Communications Facilities to any specific Pole or within any specific portion of Conduit System.

Section 2.7 Necessity of Authorizations. Licensee is obligated to obtain all necessary certification, permitting, and franchising from federal, state and local authorities prior to making any Attachments.

Section 2.8 Utility's Rights over Poles. The Licensee and Utility agree that this Code does not in any way limit Utility's right to locate, operate and maintain its Poles or Conduit System in the manner that will best enable it to fulfill its service requirements.

Section 2.9 Expansion of Capacity. Utility will take reasonable steps to expand Pole/Conduit Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Code shall be construed to require Utility to install, retain, extend, or maintain any Pole or portion of Conduit for use when such Pole/Conduit is not needed for Utility's service requirements.

Section 2.10 Other Agreements. Except as provided herein, nothing in this Code shall limit, restrict, or prohibit Utility from fulfilling any agreement or arrangement regarding Poles into which Utility has previously entered with others not party to this Code, including Joint Pole Owners.

Section 2.11 Permitted Uses. This Code is limited to the uses specifically stated in the Ordinance adopting it and no other use shall be allowed without Utility's express written consent to such use. Nothing in this Code shall be construed to require Utility to allow Licensee to use Utility's Poles or Conduit System after the termination of this Code.

Section 2.12 Overlapping. The following provisions will apply to Overlapping:

- A. A Permit shall be obtained for each Overlapping pursuant to **Article VI**. Absent such authorization, Overlapping constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in **Appendix A, Item 3**.
- B. If Licensee demonstrates that the Overlapping of Licensee's Attachment(s) is required to accommodate the Communications Facilities of Licensee or Licensee's Affiliate, Permits shall not be withheld by Utility if such Overlapping can be done consistent with **Article II, Section 2.3**. Overlapping performed pursuant to this **Article II, Section 2.12(B)** shall not increase the Annual Attachment Fee paid by Licensee pursuant to **Appendix A, Item 1**. Licensee or Licensee's Affiliate, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlapping but shall not be required to pay a separate Annual Attachment Fee for such Overlapped Attachment.

- C. If Overlashing is required to accommodate facilities of a third party that is not affiliated with Licensee, such third party must become a Licensee under this Code and obtain Permits and must pay a separate Attachment Fee (**Appendix A, Item 1**) as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. No such Permits to third parties may be granted by Utility allowing Overlashing of Licensee's Communications Facilities unless Licensee has consented in writing to such Overlashing. Overlashing performed under this **Article II, Section 2.12(C)** shall not increase the fees and charges paid by Licensee pursuant to **Appendix A, Item 1**. Nothing in this Code shall prevent Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by Licensee.
- D. Make-Ready Work procedures set forth in **Article VII** shall apply, as necessary, to all Overlashing.

Section 2.13 Enclosures. Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within **four (4) feet** of any Pole or other Utility facilities without Utility's prior written permission. If permission is granted, all such installations shall be per the Specifications and Drawings in **Appendices D and E** of this Code and charges as provided in **Appendix A** shall apply. Such permission shall not be unreasonably withheld.

ARTICLE III – FEES AND CHARGES

Section 3.1 Payment of Fees and Charges. Licensee shall pay to Utility the fees and charges specified in **Appendix A** and shall comply with the terms and conditions specified herein. Unless otherwise specified in an existing Joint Ownership Agreement, Attachments on Joint Owned Utility Poles shall be treated as follows:

For all Attachments on Joint Owned Poles Utility shall invoice Licensee at **one-half (1/2)** standard Attachment fee specified in **Appendix A**. Payment to Utility does not act to relieve Licensee of any fees payable to Joint Pole Owners.

Section 3.2 Payment Period. Irrespective of the date on which an Attachment is made, all fees shall be calculated and payable for the entire calendar year in which a Permit for such Attachment is issued under this Code.

Section 3.3 **Billing.** Utility shall invoice Licensee for the payments annually. Utility will submit to the Licensee an invoice for the annual rental period no later than **May 1**, of each year. The initial annual rental period shall commence upon the effective date of this Code and conclude on **April 30** of the next year, and each subsequent annual rental period shall commence on the following **May 1** and conclude on **April 30** of the subsequent year. The invoice shall set forth the total number of Utility's Poles on which the Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. Licensee shall pay each such invoice within **thirty (30) calendar days** after Utility's issuance thereof.

Section 3.4 **Refunds.** No fees and charges specified in **Appendix A** shall be refunded on account of any surrender of a Permit granted hereunder. No refund shall be owed if a Pole or portion of Conduit System is abandoned by Utility.

Section 3.5 **Late Charge.** If Utility does not receive payment for any fee or other amount owed within **thirty (30) calendar days** after it becomes due, Licensee, upon receipt of **fifteen (15) calendar days** written notice, shall pay interest to Utility, at the rate of _____ (____%) per month, on the amount due.

Section 3.6 **Payment for Make-Ready Work.** Licensee will be responsible for payment to Utility for all Make-Ready Work required to accommodate Licensee's Communications Facilities except as provided in **Article II, Paragraph L** above regarding Overlashing.

Section 3.7 **Advance Payment.** At the discretion of Utility, Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in **Articles VI** and **VII** below.

Section 3.8 **Determination of Charges.** Wherever this Code requires Licensee to pay for work done or contracted by Utility, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. Utility shall bill its services based upon actual costs, and such costs will be determined in accordance with Utility's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. When calculating labor costs, it will be the greater of the loaded costs of municipal labor or that of the going current "Union scale". If Licensee was required to perform work and fails to perform such work necessitating its completion by Utility, the Utility may either charge an additional **ten percent (10%)** to its costs or assess the penalty specified in **Appendix A**.

Section 3.9 **Work Performed by Utility.** Wherever this Code requires Utility to perform any work, Licensee acknowledges and agrees that Utility, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.

Section 3.10 True Up. Wherever Utility, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of the Licensee or Licensee's Affiliate and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee agrees to pay Utility for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, Utility shall refund to Licensee the difference in cost.

Section 3.11 Default for Nonpayment. Nonpayment of any amount due under this Code beyond **ninety (90) days** shall constitute a default or violation of this Code.

ARTICLE IV – SPECIFICATIONS

Section 4.1 **Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Code, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications of **Appendix D**. All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards.

Section 4.2 **Tagging.** Licensee shall Tag all of its Communications Facilities as specified in **Appendix D** and/or applicable federal, state and local regulations upon installation of such Facilities, prior authorized Attachments of Licensee shall be tagged within **one (1) year** of the execution of this Code. Failure to provide proper tagging will be considered a violation of the Specifications.

Section 4.3 **Interference.** Licensee shall not allow its Communications Facilities to impair the ability of Utility, Joint Pole Owner, or any third party to use Utility's Poles or Conduit System, nor shall Licensee allow its Communications Facilities to interfere with the operation of any Utility Facilities.

Section 4.4 **Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall at its own expense install protective devices

designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor. Except as provided in **Article XVI, Section 16.1**, Utility shall not be liable for any actual or consequential damages to Licensee's Communications Facilities or Licensee's customers' facilities.

Section 4.5 **Violation of Specifications.** If Licensee's Communications Facilities, or any part thereof, are installed, used, or maintained in violation of this Code, and Licensee has not corrected the violation(s) within **thirty (30) calendar days** from receipt of written notice of the violation(s) from Utility, Utility at its option, may correct said conditions. Utility will attempt to notify Licensee in writing prior to performing such work whenever practicable. When Utility believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of Utility's service obligations, or pose an immediate threat to the physical integrity of Utility Facilities, Utility may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, Utility will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all costs incurred by the Utility in taking action pursuant to this subsection.

Section 4.6 **Restoration of Utility Service.** Utility's service restoration requirements shall take precedence over any and all work operations of Licensee on Utility's Poles or within Utility's Conduit System.

Section 4.7 **Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Code and/or applicable Permit(s) within **ninety (90) calendar days** of the effective date of such right and any extension thereof, Utility may use the space scheduled for Licensee's Attachment(s), for its own needs, Joint Pole Owner's needs, or the needs of other Attaching Entities. In such instances, Utility shall endeavor to make other space available to Licensee, upon written application per **Article VI**, as soon as reasonably possible and subject to all requirements of this Code, including the Make-Ready Work provisions.

Section 4.8 To the extent Licensee furnishes cable television service it shall maintain test equipment to identify signal interference to its customers, and shall not identify the Utility as the source of such interference absent a test report verifying the source.

ARTICLE V – PRIVATE AND REGULATORY COMPLIANCE

Section 5.1 **Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of Utility's Poles, including Joint Pole Owners. Utility retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Licensee. Licensee's obligations under this **Article V** include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse Utility for all loss and expense, including reasonable attorneys' fees, that Utility may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on Utility's Poles or within its Conduit System.

Section 5.2 **Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.

Section 5.3 **Forfeiture of Utility's Rights.** No Permit granted under this Code shall extend to any Pole or within any Conduit on/in which the Attachment of Licensee's Communications Facilities would result in a forfeiture of Utility's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of Utility's rights, is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from Utility. Utility will perform such removal at Licensee's expense not sooner than the expiration of **thirty (30) calendar days** from Utility's issuance of the written notice.

Section 5.4 **Effect of Consent to Construction/Maintenance.** Consent by Utility to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgement that Licensee has the authority to construct or maintain any other such Attachments from all appropriate parties or agencies.

ARTICLE VI – PERMIT APPLICATION PROCEDURES

Section 6.1 **Permit Required.** No provider of Communications Services, whether or not it is a Licensee under this Code, shall install any Attachments on any Pole or within any Utility Conduit or on a Joint Owned Pole for which the Utility is the Joint Owned Pole Custodian without first applying for and obtaining a Permit pursuant to the applicable requirements of **Appendix B**. Unless otherwise notified, Utility shall be presumed by Licensee to be the Joint Owned Pole Custodian for all Joint Owned Poles. Pre-existing authorized Attachment(s) of Licensee as of the effective date of this Code shall be grandfathered with respect to Permitting, but shall be subject to the Attachment Fees. Licensee shall provide Utility with a list of all such pre-existing Attachments within **six (6) months** of the effective date of this Code. Attachments to or rights to occupy Utility Facilities not covered by this Code must be separately negotiated.

Section 6.2 **Permits for Overlashing.** As set out in **Article II, Section 2.12**, Permits are required for any Overlashing allowed under this Code and Licensee, Licensee's Affiliate or third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.

Section 6.3 **Professional Certification.** Unless otherwise waived in writing by the Utility, as part of the Permit application process, a qualified and experienced professional engineer must participate in the Pre-Construction Inspection, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles or within specified portions of Conduit in compliance with the standards in **Article IV, Section 4.1** and in accordance with the Permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. Utility, at its discretion, may waive the requirements of this **Article VI, Section 6.3**, with respect to service drops.

Section 6.4 **Utility Review of Permit Application.** Upon receipt of a properly executed Application for Permit (**Appendix C**), including the Pre-Construction Inspection, certified per **Article VI, Paragraph C** above, Utility will review the Permit Application as promptly as possible, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. Utility acceptance of the submitted design documents does not relieve the certifying professional engineer and Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

Section 6.5 **Performance of Make-Ready Work.** If Make-Ready Work is required to accommodate Licensee's Attachments, Utility or its contractors shall perform such work pursuant to **Article VII**.

Section 6.6 **Permit as Authorization to Attach.** After receipt of payment for any necessary Make-Ready Work, Utility will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

ARTICLE VII – MAKE-READY WORK/INSTALLATION

Section 7.1 **Estimate for Make-Ready Work.** In the event Utility determines that it can accommodate Licensee's request for Attachment(s), including Overlapping of an existing Attachment, it will, upon request, advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

Section 7.2 **Payment of Make-Ready Work.** Utility, at its discretion, may require payment in advance for Make-Ready Work based upon the estimated cost of such work. Upon completion Licensee shall pay Utility's actual cost of Make-Ready Work. The costs of which shall be itemized as per **Article III, Section 3.8**.

Section 7.3 **Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by Utility and/or a contractor authorized by Utility to perform such work. If Utility cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within **ninety (90) calendar days** of Licensee's request for Attachments, Licensee may seek permission from Utility for Licensee to employ a qualified contractor to perform such work.

Section 7.4 **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, Utility will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of Utility's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or Utility service restoration.

Section 7.5 **Written Approval of Installation Plans Required.** Before commencing any installation of its Communications Facilities within Utility's Conduits, or on Conduits, Utility's Poles, or Joint Owned Poles where the Utility is the Custodian, including Overlapping of existing Pole Attachments, Licensee must obtain Utility's written approval of Licensee's detailed plans for installation, which shall accompany the

Permit application, including the name of the party (Licensee and/or contractor) performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of **Article XVIII**.

Section 7.6 **Licensee's Installation/Removal/Maintenance Work.**

- A. All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Utility's Poles, Conduits or other Facilities or any Joint Pole Owner's or other Attaching Entity's facilities or equipment attached thereto.
- B. All of Licensee's installation, removal and maintenance work performed on Utility's Poles or within its Conduit or in the vicinity of other Utility Facilities, either by its employees or contractors, shall be in compliance with all applicable regulations specified in **Article IV, Paragraph A**. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards, the provisions of **Article XVII**, and the Minimum Design Specifications contained in **Appendix D**.

ARTICLE VIII – TRANSFERS

Section 8.1 **Required Transfers of Licensee's Communications Facilities.** If Utility reasonably determines that a transfer of Licensee's Communications Facilities is necessary, Licensee agrees to allow such transfer. In such instances, Utility will, at its option, either perform the transfer using its personnel, and/or contractors and/or require Licensee to perform such transfer at its own expense within **sixty (60) calendar days** after receiving notice from Utility. If Licensee fails to transfer its Facilities within **sixty (60) calendar days** after receiving such notice from Utility, Utility shall have the right to transfer Licensee's Facilities using its personnel and/or contractors at Licensee's expense plus the penalty specified in **Appendix A**. Utility shall not be liable for damage to Licensee's Facilities except to the extent provided in **Article XVI, Section 16.1**. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case Utility shall provide such advance notice as is practical given the urgency of the particular situation. Utility shall then provide written notice of any such actions taken within **ten (10) days** of the occurrence.

Section 8.2 **Billing for Transfers Performed by Utility.** If Utility performs the transfer(s), Utility will bill Licensee for actual costs per **Article III, Section 3.9**. Licensee shall reimburse Utility within **thirty (30) calendar days** of the receipt of the invoice.

ARTICLE IX – POLE MODIFICATIONS AND/OR REPLACEMENTS

Section 9.1 **Licensee’s Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Specifications, Utility will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or transfer of Utility’s Facilities. Licensee shall be responsible for separately entering into an agreement with Joint Pole Owners or other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities’ existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to Utility the actual cost of the Make-Ready Work, performed by Utility, per **Article III, Section 3.9**. Utility, at its discretion, may require advance payment.

Section 9.2 **Treatment of Multiple Requests for Same Pole.** If Utility receives Permit Applications for the same Pole from **two (2)** or more prospective licensees within **sixty (60) calendar days** of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, Utility will allocate among such licensees the applicable costs associated with such modifications or replacement. Such allocation applies only to those Attachments involving cable/wire and not Risers and/or Other Equipment.

Section 9.3 **Guying.** The use of guying to accommodate Licensee’s Attachments shall be provided by and at the expense of Licensee and to the satisfaction of Utility as specific in **Appendix D**. Licensee shall not attach its guy wires to Utility’s anchors without prior written permission of the Utility. If permission is granted, charges may apply.

Section 9.4 **Allocation of Costs.** The costs for any rearrangement or transfer of Licensee’s Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of Utility’s cables or wires) shall be allocated to Utility and/or Licensee and/or other Attaching Entity, including Joint Pole Owners, on the following basis:

- A. If Utility intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee's Communications Facilities. Prior to making any such modification or replacement Utility shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify or add to its existing Attachment. Should Licensee so elect, it must seek Utility's written permission per this Code. The notification requirement of this **Section 9.4(A)** shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by Utility in making the space on the Poles accessible to Licensee.
- B. If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity, including Joint Pole Owner, other than Utility or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs of rearranging or transferring Licensee's Communications Facilities. Licensee shall cooperate with such third party Attaching Entity to determine the costs of moving Licensee's facilities.
- C. If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), Utility shall pay the costs of such modification or replacement; provided however, that Licensee shall be responsible for the costs of rearranging or transferring its Communications Facilities.

Section 9.5 No provision of this Code shall be construed to require Utility to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by Utility for modification of the pole is based on nondiscriminatory standards of general applicability.

ARTICLE X – ABANDONMENT OR REMOVAL OF UTILITY FACILITIES

Section 10.1 Notice of Abandonment or Removal of Utility Facilities. If Utility desires at any time to abandon, remove or underground any Utility Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in

writing to that effect at least **sixty (60) calendar days** prior to the date on which it intends to abandon or remove such Utility's Facilities. Notice may be limited to **thirty (30) calendar days** if Utility is required to remove or abandon its Utility Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether Utility is offering Licensee an option to purchase the Pole(s). If, following the expiration of said period, Licensee has not yet removed and/or transferred all of its Communications Facilities therefrom and has not entered into an agreement to purchase the Utility's Facilities pursuant to **Section 10.2** of this **Article X**, Utility shall have the right, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or transferred from the Pole at Licensee's expense. Utility shall give Licensee prior written notice of any such removal or transfer of Licensee's Facilities.

Section 10.2 Option to Purchase Abandoned Poles. Should Utility desire to abandon any Pole, Utility, in its sole discretion, may grant Licensee the option of purchasing such Pole at a rate negotiated with Utility. Licensee must notify Utility in writing within **thirty (30) calendar days** of the date of Utility's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within **forty-five (45) calendar days**. Should Licensee fail to secure the necessary governmental approvals, or should Utility and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the **forty-five (45) calendar days**, Licensee must remove its Attachments as required under **Section 10.1** of this **Article X** Utility is under no obligation to sell Licensee Poles that it intends to remove or abandon.

Section 10.3 If Utility moves its aerial system underground and Utility has available conduit to accommodate Licensee's above ground Attachments, Licensee shall relocate its Communications Facilities into such conduit within **sixty (60) calendar days** of receipt of notice from Utility or find other means to accommodate its Facilities. Failure to remove aerial Facilities upon Utilities conversion to underground shall subject Licensee to the penalty provisions of **Appendix A**.

ARTICLE XI – REMOVAL OF LICENSEE'S FACILITIES

Section 11.1 Removal on Expiration/Termination. At the termination of the Permits issued to Licensee under this Code or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles or portions of Conduit

System at its own expense. If Licensee fails to remove such facilities within **sixty (60) calendar days** of expiration or termination or some greater period as allowed by Utility, Utility shall have the right to have such facilities removed at Licensee's expense.

ARTICLE XII – TERMINATION OF PERMIT

Section 12.1 Automatic Termination of Permit. Any Permit issued pursuant to this Code shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s)/portion of Conduit covered by the Permit.

Section 12.2 Surrender of Permit. Licensee may at any time surrender any Permit for Attachment and remove its Communications Facilities from the affected Pole(s) or segment of Conduit, provided, however, that before commencing any such removal Licensee must obtain Utility's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of **Article XVIII**. No refund of any fees or costs will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from Utility's Facilities within **thirty (30) calendar days** thereafter, Utility shall have the right to remove Licensee's Attachments at Licensee's expense.

ARTICLE XIII – INSPECTION OF LICENSEE'S FACILITIES

Section 13.1 Inspections. After the Post-Construction Inspection, Utility may conduct an inventory and inspection of Attachments. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within **thirty (30) calendar days** of notification. If it is found that Licensee has made an Attachment without a Permit the Licensee shall pay a fee as specified in **Appendix A, Item 3** in addition to applicable Permit and Make-Ready charges. If it is found that **five percent (5%)** or more of Licensee's Attachments are either in noncompliance or not permitted shall pay the costs of the inspection.

Section 13.2 Notice. Utility will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

Section 13.3 No Liability. The making of any inspections under this **Article XIII**, or the failure to do so, shall not operate to impose upon Utility any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Code or otherwise existing.

Section 13.4 Attachment Records. Notwithstanding the above inspection provisions, Licensee is obligated to furnish Utility on an annual basis an up to date map depicting the locations of its attachments in an electronic format specified by the Utility.

ARTICLE XIV – UNAUTHORIZED OCCUPANCY OR ACCESS

Section 14.1 Penalty Fee. If any of Licensee's Attachments are found occupying any Pole or segment of Conduit for which no Permit has been issued, Utility, without prejudice to its other rights or remedies under this Code, may assess an Unauthorized Access Penalty Fee as specified in **Appendix A, Item 2**. In the event Licensee fails to pay such Fee within **thirty (30) calendar days** of receiving notification thereof, Utility has the right to remove such Communications Facilities at Licensee's expense.

Section 14.2 No Ratification of Unlicensed Use. No act or failure to act by Utility with regard to said unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by Utility of any of its rights or privileges under this Code or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Code in regards to said unauthorized use from its inception.

ARTICLE XV – ADVANCE PAYMENT

Section 15.1 Utility holds the right to require, at its sole discretion, for Licensee to furnish Advance Payment for each Attachment in the amount of the first Annual Attachment Fee as specified in **Appendix A, Item 1** plus any estimated Make-Ready Work expenses.

ARTICLE XVI – LIABILITY AND INDEMNIFICATION

Section 16.1 Liability. Utility reserves to itself the right to maintain and operate its Poles and Conduit System in such manner as will best enable it to fulfill its service requirements. Licensee agrees to use Utility's Poles and Conduit at Licensee's sole risk. Notwithstanding the foregoing, Utility shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to **Article XVI, Section 16.5**, Utility agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the gross negligence or willful misconduct of Utility, provided, however, that the aggregate liability of Utility, to Licensee, in any fiscal year, for any other fines, penalties, claims or damages stemming from interruption of Licensee's service or interference with the operation of Licensee's Communications Facilities (including special, indirect, punitive, or consequential damages) shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to Utility for that year as calculated based on the number of Attachments under Permit at the time of the damage per **Appendix A, Item 1**.

Section 16.2 Indemnification. Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless Utility and its officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors, against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by Utility under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney fees of Utility and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents, and contractors, of Licensee's Communications Facilities, except to the extent of Utility's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

- A. Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- B. Cost of work performed by Utility that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents, or contractors, to install, maintain, present, use, transfer or remove Licensee's Communications Facilities in

accordance with the requirements and specifications of this Code, or from any other work this Code authorizes Utility to perform on Licensee's behalf;

- C. Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, and contractors, pursuant to this Code;
- D. Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents, and contractors, of any law, rule, or regulation of the United States, State of Illinois or any other governmental entity or administrative agency.

Section 16.3 Procedure for Indemnification.

- A. Utility shall give notice promptly to the Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against Utility, the notice shall be given to Licensee by Utility no later than **ten (10) calendar days** after written notice of the action, suit or proceeding was received by Utility.
- B. Failure to timely give the required notice will not relieve the Licensee from its obligation to indemnify the Utility unless the Licensee is materially prejudiced by such failure.
- C. The Licensee will have the right at any time, by notice to the Utility, to participate in or assume control of the defense of the claim with counsel of its choice, which counsel must be reasonably acceptable to the Utility. The Utility agrees to cooperate fully with the Licensee. If the Licensee so assumes control of the defense of any third-party claim, the Utility shall have the right to participate in the defense at its own expense. If the Licensee does not so assume control or otherwise participate in the defense of any third-party claim, it shall be bound by the results obtained by the Utility with respect to the claim.
- D. If the Licensee assumes the defense of a third-party claim as described above, then in no event will the Utility admit any liability with respect to, or settle, compromise or discharge, any third party claim without the Licensee's prior written consent, and the Utility will agree to any settlement, compromise or discharge of any third-party claim which the Licensee may recommend which releases the Utility completely from such claim.

Section 16.4 Environmental Hazards. Licensee represents and warrants that its use of Utility's Poles will not generate any hazardous substances, that it will not store or dispose on or about Utility's Poles/Conduit or transport to Utility's Poles/Conduit any hazardous substances and that Licensee's Communications Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. "Hazardous substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities would not release such hazardous wastes or substances. Licensee, and its agents, contractors and subcontractors, shall defend, indemnify and hold harmless Utility and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any such hazardous wastes or hazardous substances on, under or adjacent to Utility's Poles/Conduit attributable to Licensee's use of Utility's Poles or Conduit.

Should Utility's Poles be declared hazardous waste, the Utility, Licensee and all Attaching Entities, including Joint pole Owners, shall share proportionately in the cost of disposal of said Poles based on their individual percentage use of same. For Attaching Entities such percentage shall be derived from the sum of Assigned Space occupied by each Attaching Entity plus its share of the Common Space. For the Utility such percentage shall be equal to the space above the NESC 40 inch safety space plus its share of the Common Space. Provided, however, if the source or presence of the hazardous substance is solely attributable to particular parties, such costs shall be borne solely by said parties.

Section 16.5 Municipal Liability Limits. No provision of this Code is intended, or shall be construed, to be a waiver for any purpose by Utility of any applicable State limits on municipal liability. No indemnification provision contained in this Code under which Licensee indemnifies Utility shall be construed in any way to limit any other indemnification provision contained in this Code.

Section 16.6 Attorney's Fees. If Utility brings a successful action in a court of competent jurisdiction to enforce this Code Licensee shall pay Utility's reasonable attorney fees.

ARTICLE XVII – DUTIES, RESPONSIBILITIES, AND EXCULPATION

Section 17.1 Duty to Inspect. Licensee acknowledges and agrees that Utility does not warrant the condition or safety of Utility's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Utility's Poles or Conduit and/or premises surrounding the Poles or Conduit, prior to commencing any work on Utility's Poles or Conduit or entering the premises surrounding the Poles or Conduit.

Section 17.2 Knowledge of Work Conditions. By executing this Code, Licensee warrants that it has acquainted, or willfully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Code and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

Section 17.3 Disclaimer. Utility makes no express or implied warranties with regard to Utility's Poles or Conduit System, all of which are hereby disclaimed, and Utility makes no other express or implied warranties, except to the extent expressly and unambiguously set forth in this Code. Utility expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.

Section 17.4 Duty to Competent Supervision and Performance. The Licensee and Utility further understand and agree that in the performance of work under this Code, Licensee and its agents, servants, employees, contractors and subcontractors will work near electrically energized lines, transformers, or other Utility Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Code, except in an emergency endangering life, grave personal injury, or property. Licensee shall ensure that its employees, servants, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of Utility, and the general public, from harm or injury while performing work permitted pursuant to this Code. In addition, Licensee shall furnish its employees, servants, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of Utility's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

Section 17.5 Requests to De-energize. In the event Utility de-energizes any equipment or line at Licensee's request and for its benefit and convenience in performing a particular segment of any work, Licensee shall reimburse Utility in full for

all costs and expenses incurred, in accordance with **Article III, Section 3.8**, in order to comply with Licensee's request. Before Utility de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request.

Section 17.6 Interruption of Service. In the event that Licensee shall cause an interruption of service by damaging or interfering with any equipment Utility, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify Utility immediately.

Section 17.7 Duty to Inform. Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Utility's Poles or within Utility Conduit by Licensee's employees, servants, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, servants, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

ARTICLE XVIII – INSURANCE

Section 18.1 Policies Required. At all times during the term of this Code, Licensee shall keep in force and effect all insurance policies as described below:

- A. Worker's Compensation and Employers' Liability Insurance. Statutory worker's compensation benefits and employers' liability insurance with a limit of liability no less than that required by Illinois law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of Utility. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- B. Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than **Two Million Dollars (\$2,000,000)** general aggregate, **Two Million Dollars (\$2,000,000)** products/completed operations aggregate, **Two Million Dollars (\$2,000,000)** personal injury, **Two Million Dollars (\$2,000,000)** each occurrence.

- C. Automobile Liability Insurance. Business automobile policy covering all owned, hired or non-owned private passenger autos and commercial vehicles. Limits of liability not less than **One Million Dollars (\$1,000,000)** each occurrence, **One Million Dollars (\$1,000,000)** aggregate.
- D. Umbrella Liability Insurance. Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than **Four Million Dollars (\$4,000,000)** each occurrence, **Four Million Dollars (\$4,000,000)** aggregate.
- E. Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and utility structures, fencing, or support systems that may be placed on, within, or around Utility Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

Section 18.2 Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of Illinois and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, worker's compensation and employer's liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article with the same limits.

Section 18.3 Certificate of Insurance; Other Requirements. Prior to the execution of this Code and prior to each insurance policy expiration date during the term of this Code, Licensee will furnish Utility with a Certificate of Insurance and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Code and worker's compensation and property insurance waivers of subrogation required by this Code. Utility shall be given **thirty (30) calendar days** advance notice of cancellation or nonrenewal of insurance during the term of this Code. Utility, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except worker's compensation, which shall be so stated on the Certificate of Insurance. All policies, other than worker's compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed **One Hundred Thousand Dollars (\$100,000)**, or such greater amount as expressly allowed in writing by Utility. Licensee shall defend, indemnify and hold harmless Utility and Additional Insureds from

and against payment of any deductible and payment of any premium on any policy required under this **Article XVIII**. Licensee shall obtain Certificates of Insurance from its agents, contractors and subcontractors and provide a copy of such Certificates to Utility upon request.

Section 18.4 Limits. The limits of liability set out in this **Article XVIII** may be increased or decreased by mutual consent of the Licensee and Utility, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee's exposure to risk.

Section 18.5 Prohibited Exclusions. No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Code with Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to Utility's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or contractor's employees, servants or agents. This list of prohibited provisions shall not be interpreted as exclusive.

Section 18.6 Deductible/Self-Insurance Retention Amounts. Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

ARTICLE XIX – AUTHORIZATION NOT EXCLUSIVE

Section 19.1 Utility shall have the right to grant, renew and extend rights and privileges to others not party to this Code, including Joint Pole Owners, by contract or otherwise, to use Utility Facilities covered by this Code. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Code.

ARTICLE XX – ASSIGNMENT

Section 20.1 Limitations on Assignment. Licensee shall not assign its rights or obligations under this Code, nor any part of such rights or obligations, without the prior written consent of Utility, which consent shall not be unreasonably withheld.

Notwithstanding the foregoing, Licensee may assign or transfer its interest in this Code to Licensee's Affiliate without Utility's consent, provided that Utility is given prior written notice of such transfer.

Section 20.2 Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this **Article XX** shall be allowed until the assignee or transferee becomes a signatory to this Code and assumes all obligations of Licensee arising under this Code. Licensee shall furnish Utility with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Code and shall not be released from performing any of the terms, covenants or conditions of this Code without the express written consent to the release of Licensee by Utility.

Section 20.3 Sub-Licensing. Without Utility's prior written consent, Licensee shall not sub-license to a non-affiliated third party, including but not limited to allowing third parties to place Attachments on Utility's Facilities, including Overlapping, or to place Attachments for the benefit of such third parties on Utility's Poles or within Utility's Conduit. Any such action shall constitute a material breach of this Code. The use of Licensee's Communications Facilities by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or Overlapping is not subject to the provisions of this **Article XX, Section 20.3**.

ARTICLE XXI – FAILURE TO ENFORCE

Section 21.1 Failure of Utility or Licensee to take action to enforce compliance with any of the terms or conditions of this Code or to give notice or declare this Code or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Code, but the same shall be and remain at all times in full force and effect until terminated, in accordance with the Code.

ARTICLE XXII – TERMINATION OF PERMITS

Section 22.1 Notwithstanding Utility's rights under **Article XII**, Utility shall have the right, pursuant to the procedure set out in **Article XXII, Section 22.2**, to terminate any and all Permits issued hereunder, whenever Licensee is in default or violation of any term or condition of this Code, including but not limited to the following circumstances:

- A. Construction, operation or maintenance of Licensee’s Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or
- B. Construction, operation or maintenance of Licensee’s Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority or violation of any other agreement with the Utility; or
- C. Construction, operation or maintenance of Licensee’s Communications Facilities without the insurance coverage required under **Article XVIII**.

Section 22.2 Utility will notify Licensee in writing within **fifteen (15) calendar days**, or as soon as reasonably practicable, of any condition(s) applicable to **Section 22.1** above. Licensee shall take immediate corrective action to eliminate any such condition(s) within **fifteen (15) calendar days**, or such longer period mutually agreed to by the Licensee and Utility, and shall confirm in writing to Utility that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, Utility may immediately terminate this Code or any Permit(s). In the event of termination of this Code or any of Licensee’s rights, privileges or authorizations hereunder, Utility may seek removal of Licensee’s Communications Facilities pursuant to the terms of **Article XI**, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Code to Utility until Licensee’s Communications Facilities are actually removed.

ARTICLE XXIII – NOTICES

Section 23.1 Wherever in this Code notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

If to Utility, at:

If to Licensee, at the address identified when the provider of Communications Services becomes a Licensee under this Code

or to such other address as either party, from time to time, may give the other part in writing.

Section 23.2 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where Utility can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the Licensee and Utility. Such contact person shall be qualified and able to respond to Utility's concerns and requests. Failure to maintain an emergency contact shall subject the Licensee to a penalty of **One Hundred Dollars (\$100.00)** per incident, and shall eliminate Utility's liability to Licensee for any actions that Utility deems reasonably necessary given the specific circumstances.

ARTICLE XXIV – PREVIOUS AGREEMENTS

Section 24.1 This Code supersedes all previous agreements, whether written or oral, between Utility and Licensee for placement and maintenance of Licensee's Communications Facilities on Utility's Poles or within the Utility's Conduit System within the geographical service area covered by this Code; and there are no other provisions, terms or conditions to this Code except as expressed herein.

ARTICLE XXV – SEVERABILITY

Section 25.1 If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

ARTICLE XXVI – GOVERNING LAW

Section 26.1 The validity, performance and all matters relating to the effect of this Code and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Illinois.

ARTICLE XXVII – INCORPORATION OF FINDINGS AND APPENDICES

Section 27.1 The findings stated in and all appendices to the Ordinance adopting this Code are incorporated into and constitute part of this Code.

ARTICLE XXVIII – PERFORMANCE BONDS

Section 28.1 Upon becoming a Licensee under this Code, Licensee shall provide to Utility a performance bond in an amount that is equal to **One Hundred Dollars (\$100.00)** per Licensee Pole Attachment, and **One Hundred Dollars (\$100.00)** per linear feet of Conduit occupied, which amounts shall be adjusted accordingly on an annual basis to account for additions or reductions in the total number of Licensee's Pole Attachments and use of Conduit. The bond shall be with an entity and in a form acceptable to Utility. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Code and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to Utility which arise by reason of the construction, operation, maintenance or removal of Licensee's Communications Facilities on or about Utility's Poles or Conduit System.

(Ord. No. 1077; 10-19-04)

APPENDIX A

POLE ATTACHMENT FEES AND CHARGES

Effective Date 10/19/04

1. Annual Pole Attachment Fee: \$18.80 per attachment/per year

[Select among one of the two options below]

The Annual Attachment Fees shall be adjusted annually by any change in the Index now known as "United States Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, base period 1982-84 = 100, (CPI-U)," hereinafter referred to as the "Index". The parties agree that the April 2004 Index is 2%.

2. Non-Recurring Fees:

One-time License Agreement Fee	\$0.00
Permit Application Fee (1-50 Poles)	\$50.00 per Permit Application
Permit Application Fee (51 or more Poles)	\$5.00 per Permit Application
Make Ready Work Charges	See Article III of Agreement
Miscellaneous Charges	See Article III of Agreement [or Attach Fee Schedule for Work Performed for the Licensee]
Inspection Fees	See Article III of Agreement

Note: Permit Application and Riser/Enclosure fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs.

3. Unauthorized Attachment Penalty Fee
(3 x annual attachment fee, per occurrence)
4. Failure to timely transfer, abandon or remove facilities penalty
(1/5 annual attachment fee per day, per pole first 30 days)
(annual attachment fee per day, per pole, second 30 days)
(annual attachment fee per day, per pole, after 60 days)

CONDUIT FEES AND CHARGES

1. Annual Conduit Rental Fee: \$1.00 per linear foot/per year

The Annual Conduit Fee shall be adjusted annually up or down in proportion to any change over time in the Handy-Whitman Index for Electric Utility Construction Cost for the Mid-Central Region of the United States for Federal Energy Regulatory Account Number 364, Poles, Towers and Fixtures.

2. Non-Recurring Fees:

One-time License Agreement Fee	\$0.00
Permit Application Fee (1-100 feet of conduit)	\$50.00 per Permit Application
Permit Application Fee (100 or more feet of conduit)	\$5.00 per Permit Application
Make Ready Work Charges	See Article III of Agreement
Miscellaneous Charges	See Article III of Agreement [or Attach Fee Schedule for Work Performed for the Licensee]
Inspection Fees	See Article III of Agreement

Note: Permit Application fees may be adjusted periodically, but not more often than annually, to reflect increases in operating costs.

3. Unauthorized Conduit Usage Penalty Fee
(3 x annual, per occurrence)
4. Failure to timely transfer, abandon or remove facilities penalty
(1/5 annual conduit fee per day, per linear foot first 30 days)
(annual conduit fee per day, per linear foot, second 30 days)
(annual conduit fee per day, per linear foot, after 60 days)

APPENDIX B

POLE ATTACHMENT PERMIT APPLICATION PROCESS

The following procedure is to be followed by each Licensee seeking to make new Attachments on Utility's Poles. Not that no entity may make any Attachments to Utility's Poles without having first entered into a binding Pole Attachment Licensing Agreement.

1. Licensee shall submit a written request to perform a Pre-Construction Inspection. The request must include a preliminary route description. Licensee shall have a professional engineer participate in a Pre-Construction Inspection, which will include a review of the proposed Attachment(s) to determine the feasibility of the request and identify any potential Make-Ready Work. Appendix F to this Agreement contains the minimum design review information that an applicant must provide and a worksheet for determining the minimum specifications that the proposed Attachment must meet.
2. Following the Pre-Construction Inspection, Licensee shall submit a completed Permit Application (Appendix C) that includes: route map, information required in Appendix F, installation plans and recommendations on Make-Ready Work. Licensee shall prepare the Permit Application in adherence with the Applicable Standards (Section I.B. of Agreement) and specifications (Appendix D). The engineering analysis must be signed and sealed by a professional engineer.
3. The Utility will review the professional engineer's recommendations and discuss any issues with the Licensee.
4. Upon receipt of written authorization, Utility will proceed with Make-Ready Work according to the specific agreed upon installation plans and the terms of the Agreement, including payment for the Make Ready Work charges as set out by Utility and agreed to by the Licensee.
5. Utility will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed upon installation plans.
6. The Licensee's professional engineer shall submit written certification that he has completed the Post-Construction Inspection and that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within **ninety (90) calendar days** after installation is complete.
7. If Utility waives the professional engineer requirement, the Utility will perform the Post-Construction Inspection and charge the Licensee per **Article III** of the Agreement.

APPENDIX C

APPLICATION FOR PERMIT

Application Date: / /

To: **[Insert Address of Utility Permitting Department]**

Desire to: Attach to Utility Pole(s) Remove Attachment from Utility Pole(s)

Permit No. _____ Superseded Permit No. _____

No. of Poles this permit _____ Sheet 1 of _____

Licensee Name: _____

Address: _____

Contact Person: _____ Title: _____ Phone No. _____

Utility Contact Person: _____ Title: _____ Phone No. _____

Narrative Description of proposed activity:

In accordance with the terms and conditions of the Pole Attachment Licensing Agreement dated _____, application is hereby made for a Permit to attach to and/or vacate Pole(s) in the locations detailed on the attached Route Map(s). Also, attached is documentation as required by Appendix F of the Agreement. The engineer's name, Illinois registration number and phone number are:

Name: _____ Reg. E: _____ Phone No. _____

Permission is hereby granted to Licensee to attach and/or vacate poles listed on the attached Field Data Summary Sheets, subject to payment of the necessary Make-Ready Work charges as set out by Utility and agreed to by the Licensee.

SUBMITTED:

Licensee _____

By _____

Title _____

Date _____

APPROVED:

Utility _____

By _____

Title _____

Date _____

APPENDIX D

SPECIFICATIONS FOR LICENSEE'S ATTACHMENTS

The following engineering and construction practices will be followed by Licensee when making Attachments to Utility Poles.

- A. All attachments shall be made in accordance with the Applicable Standards as defined in the Pole Attachment Licensing Agreement, Article I – Definitions.
- B. Clearances.
 1. Attachment and Cable Clearances. Licensee's Attachments on Utility Poles, including metal attachment clamps and bolts, metal cross arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code (NESC) and in drawings and specifications Utility may from time to time furnish Licensee. (See Drawings I-1 to I-5)
 2. Service Drop Clearance. The parallel minimum separation between Utility's service drops and communications service drops shall be **twelve (12) inches**, and the crossover separation between the drops shall be **twenty-four (24) inches**. (See Drawing I-4)
 3. Sag and Mid-Span Clearances. Licensee will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are (a) achieved at poles located on both ends of the span; and (b) retained throughout the span. At mid-span, a minimum of **twelve (12) inches** of separation must be maintained between any other cables. At the pole support, a **twelve (12) inch** separation must be maintained between Licensee and any other connection/attachment. (See Drawing I-4)
 4. Service Clearances. A **four (4) inch** separation shall be maintained between Utility's service cable and/or any other Attaching Entity's facilities located on the customer's private property in accordance with the National Electrical Code (NEC).
 5. Vertical Runs on Poles. All Risers on poles, including those for power feed for TV amplifiers, shall be placed on the quarter faces of the pole and shall be covered by a riser guard with a **two (2) inch** clearance in any direction from cable, bolts, clamps, metal supports and other equipment. Secondary cable providing service to street lights may be covered with non-metallic conduit to allow minimum clearances to communication cables as permitted in the NESC.

6. Climbing Space. A clear Climbing Space must be maintained at all times on the face of the pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the face of the Utility Pole. Licensee's cable/wire Attachments shall be placed on the same side of the pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on pole quarter faces. (See Drawing I-5)
- C. Down Guys and Anchors
1. Licensee shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on the Utility's poles by Licensee's Attachments.
 2. Anchors and guy wires must be installed on each Utility pole where there is an angle or a dead-end occurs. No proposed anchor can be within **four (4) feet** of an existing anchor without written permission of Utility.
 3. Licensee may not attach guy wires to the anchors of the Utility or third party user without the anchor owner's prior written consent.
 4. No Attachment may be installed on a Utility pole until all required guys and anchors are installed, nor may any Attachment be modified, added to or relocated in such a way as will materially increase the stress or loading on Utility poles until all required guys and anchors are installed.
 5. Licensee's down guys shall be bonded to ground wires of the Utility's Pole.
- D. Certification of Licensee's Design
1. The Licensee's Attachment Permit Application must be signed and sealed by a registered professional engineer, certifying that the Licensee's aerial cable design fully complies with the NESC and the Utility's Construction Standards and any other Federal, State or Local codes and/or requirements.
 2. This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of the Utility's facilities and other Third Party facilities that exist on the poles.
- E. Miscellaneous Requirements
1. Cable Bonding. Licensee's messenger cable shall be bonded to Utility's pole ground wire at each pole that has a ground wire.
 2. Customer Premises. Licensee's service drop into customer premises shall be protected as required by the most current edition of the NEC.
 3. Communication Cables. All Communications cables/wires not owned by Utility shall be attached within the Communications space that is located **forty (40) inches** below the Utility neutral or the lowest Utility-owned effectively grounded messenger.

4. Riser Installations. All Licensee's Riser installations shall be placed on metal stand-off brackets. (See Drawing I-3)
5. Tagging. All Licensee's Riser, including all cable, shall be identified with a band type marker or other identification acceptable to Utility at each Attachment. The marker must identify the Licensee.
6. Safety Zone. No mounting brackets are permitted in the safety zone. The safety zone between communication facilities and supply facilities on the same pole extends horizontally out to the boundaries of the climbing space and working space. The safety zone is measured vertically from the level of the closest surface of the communication facility to the level of the closest surface of the supply facility. The required clearance of the safety zone is measured vertically between the levels of the equipment involved. Stand off bracket installation will not be allowed to meet the **forty (40) inch** clearance requirement. (See Drawing I-5)

F. Utility Construction Standards

1. Refer to the attached Utility Construction Standards, or obtain the applicable construction standards from the Utility in accordance with the affected Utility's requirements.
2. Apply the Utility's construction standards in coordination of the applicable NESC, NEC and any other Federal, State or Local code requirements.

APPENDIX E

DRAWINGS

Drawing I-01	(Overhead Minimum Clearance)
Drawing I-02	(Overhead Minimum Clearance)
Drawing I-03	(Power Service)
Drawing I-04	(Minimum Clearance to Service and Roadway)
Drawing I-05	(Attachments at Transformer Poles)

DEFERRED PAYMENT AGREEMENT

Property Address:

Breese, Illinois

Customer Printed Name, Address and Phone:

The undersigned, _____, (hereinafter "Customer") acknowledge and agree that Customer owes the City of Breese (hereinafter "the City") the amount of \$_____ for utility services that are now past due. The past due amounts are for the following period: _____. The amount includes a ten percent (10%) penalty for amounts in default.

Customer understands and acknowledges that the City has the right to disconnect Customer's utility services by reason of Customer's default in payment for such utility service. The City has agreed to allow Customer to avoid disconnection of utility service, because of said default, if Customer agrees to enter into this agreement to cure said default by making payment of past-due amounts in four equal consecutive monthly payments beginning on the date of this agreement.

As consideration for the City's forbearance on its right to disconnect Customer's utility service by reason of Customer's default in payment because of the past-due amounts as stated herein, Customer hereby promises to pay to the order of the City, the amount of _____ (\$_____). Said amount shall be payable as follows:

- A. The first payment in the amount of \$_____ shall be paid on the date of this agreement;
- B. The second payment in the amount of \$_____ shall be due on or before _____ 25th, 20____;
- C. The third payment in the amount of \$_____ shall be due on or before _____ 25th, 20____;
- D. The fourth payment in the amount of \$_____ shall be due on or before _____ 25th, 20____;

Customer further agrees that Customer shall remain current in payment on all utility bills which shall come due and payable during the period of time in which this Deferred Payment Agreement shall be performed.

Customer further agrees and acknowledges that upon any default in the payment terms of this Deferred Payment Agreement or in the event that Customer fails to timely make payment of any utility bill which becomes hereafter due and owing, then the City shall send a Notice to Customer of the default. Said Notice shall be made by the City by first class mail, by personal delivery or by posting notice on the premises receiving the utility services. Said notice shall state that Customer shall have five (5) days from the date of the notice to cure the default in payment. In the event that Customer fails to cure the default in payment by such date, Customer understands and acknowledges that the City shall have the right to disconnect Customer's utility service upon twenty-four (24) hours' notice sent by first class mail, delivered personally or posted on the premises receiving the utility service.

IN WITNESS WHEREOF, this Agreement is executed, sealed and delivered this _____ day of _____, 20__.

CUSTOMER

signature

signature

Accepted by:

The City of Breese, Illinois

By: _____
Charles E. Hilmes, Mayor